

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

TRANSCRIPT OF PROCEEDINGS

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:
DAVID M. DAUGHERTY, : CIVIL ACTION
:
Plaintiff, : NO. 5:14-CV-24506
:
vs. :
:
OCWEN LOAN SERVICING, LLC, : May 17, 2016
:
Defendant. :
:
-----x

TRIAL
VOLUME II

BEFORE THE HONORABLE IRENE C. BERGER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography; transcript
produced by computer.

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David Daugherty - Cross (Manning)

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P R O C E E D I N G S

THE COURT: Good morning, everyone.

Mr. Manning, are you ready to resume cross-examination?

MR. MANNING: Yes, Your Honor.

THE COURT: All right.

Mr. Daugherty, if you would take the stand, please.

DAVID DAUGHERTY, PLAINTIFF, RESUMED THE WITNESS STAND

MR. MANNING: May I proceed, Judge?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. MANNING:

Q. Good morning, Mr. Daugherty.

A. Good morning.

Q. We're going to continue with my examination now.

A. Okay.

Q. And I want to start by going through two of the documents we didn't get a chance to talk about yesterday, if we could start with Plaintiff's Exhibit 3.

So let's scroll to the top just so that you can see what document this is. This is the March 18th, 2013, response letter from Ocwen. It's been marked as Plaintiff's Exhibit 3. And you may recall that yesterday during your examination with Mr. Nolan you, you seemed to suggest that Ocwen got it wrong, that it addressed the wrong time period.

A. That's correct.

1 Q. That's your position; right?

2 A. Yes.

3 Q. Okay. So let's just scroll down just so we can see
4 what Ocwen said. And you see how -- concern number one,
5 that's the concern that they understood you to be making;
6 right?

7 A. That's what they're saying in their response letter.

8 Q. Okay. And it says March, 2012. And then below that it
9 addresses what was happening in 2012. That's the subsequent
10 paragraphs; right?

11 A. Yes.

12 Q. And I took your testimony to mean you weren't
13 complaining about 2012. You were complaining about
14 something else.

15 A. That's what they understood on the phone too. We
16 talked about currently.

17 Q. Right. And I just want to for now focus on what you
18 were intending to mean. You were -- they were addressing
19 2012 and you thought that you had told them something else;
20 right?

21 A. No, that's what I told them, currently.

22 Q. In the letter?

23 A. Yes. No, on the phone and in the letter.

24 Q. Okay. On the phone and in the letter?

25 A. Yes.

David Daugherty - Cross (Manning)

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1 Q. This is a response to the letter; right?

2 A. Yeah, I would imagine it is.

3 Q. Okay. So let's look at the letter, Exhibit 2. It was
4 the one right before this. This is the letter that you had
5 sent regarding your concern regarding the account; right?

6 A. Yes.

7 Q. And you see at the top right-hand corner it doesn't
8 have a date; right? It just says March 14, 20- and then
9 blank. Did you just omit that?

10 A. I don't know if it got cut off or what, what happened
11 there.

12 Q. Well, if you follow it down on the right-hand margin
13 you can see the word "as" is actually further out. You'd
14 agree with that; right?

15 A. Okay. Something happened where it didn't come across.

16 Q. Okay, yeah. That's fair. If you go to the second
17 page, this is what you were asking Ocwen to address; right?

18 A. Yes.

19 Q. Okay. If you look at the bottom where it identifies
20 the time period, it's relatively small. You can see the
21 years 2010, 2011, 2012. Right?

22 A. Yes.

23 Q. So in your letter -- you do a cover letter and you say,
24 "Address this issue." You don't say anything about the time
25 period. And then you attach this excerpt, an incomplete

David Daugherty - Cross (Manning)

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1 credit report, just an excerpt from something; right?

2 A. That's correct.

3 Q. And then you say, "Address this." But there's nothing
4 in here about 2013.

5 A. I see that.

6 Q. So when you sent this, you said, "Please address this,"
7 it only goes up through 2012. You'd agree with that; right?

8 A. Yes, that's what this states.

9 Q. So when Ocwen received the letter and responded to it,
10 you can understand why they would have responded to 2012
11 because that's what you asked them to do in the letter;
12 right?

13 A. In the letter, that's correct.

14 Q. Okay. Thank you. Now let's go to the next letter,
15 Plaintiff's Exhibit 4. You recall talking about this letter
16 yesterday also; right?

17 A. Yes.

18 Q. So the last exhibit, Exhibit 2, was March, 2013, when
19 you sent it. And this one is March, 2014; correct?

20 A. That's correct.

21 Q. And there's no letters in between that you've
22 identified; right?

23 A. No letters in between.

24 Q. Okay. So there's a whole year where you're not sending
25 any written correspondence ever since you said, "Look at

1 2012;" right?

2 A. I believe I disputed some on the credit report as far
3 as the credit score.

4 Q. Okay. And by that I take it you mean you asked a third
5 party, Lorin Hanks, --

6 A. No. There's actually a dispute process on some of the
7 credit scores on the -- that you can look up that keeps your
8 credit. You can actually dispute, and I disputed some of
9 those on there too.

10 Q. Okay. That's the first I've heard of it. You didn't
11 talk about that with your attorney during trial; right?

12 A. Not during trial, but I'm just saying I thought maybe
13 some of those 2009 was in that, but I did dispute on the
14 credit score. It has a place -- when you look it up,
15 there's a place where you can dispute. I believe there's
16 some on there.

17 Q. I'm not following you. So this is a different dispute
18 that you made with a different company, creditscore.com?

19 A. Yes, I believe that's the one.

20 Q. Okay. But they're not in this case; right?

21 A. No.

22 Q. And they're not here to testify?

23 A. That's correct.

24 Q. And you don't have any documents from them?

25 A. No.

David Daugherty - Cross (Manning)

9

1 Q. Okay. So let's just focus on this letter. And this
2 letter is the one where in this situation it's been a full
3 year since you've sent anything to Ocwen; right?

4 A. According to you, yes.

5 Q. I'm asking for your testimony.

6 A. I'm saying I disputed other matters.

7 Q. Okay. And you've just identified -- and correct me if
8 I'm wrong. You've just identified those other disputes or
9 it was somebody else?

10 A. Yeah, but I'm saying I did it.

11 Q. And I understand that. My question to you, sir, is for
12 a full year you're not sending any written communication to
13 Ocwen; correct?

14 A. Personally, that's correct.

15 Q. Okay. And when you say "personally," --

16 A. I myself.

17 Q. You yourself did not do that?

18 A. That's correct.

19 Q. You hired a company who was separately doing something
20 and you didn't look at those letters either?

21 A. That's correct, to my knowledge.

22 Q. All right. Now, in this letter what you're talking
23 about, if you look towards the bottom, is you're talking
24 about the 2013 reporting period; right?

25 A. Yes.

David Daugherty - Cross (Manning)

10

1 Q. You're saying Equifax -- and I don't want to belabor
2 this. We went over it yesterday. You're complaining
3 Equifax is still showing a past due in 2013; right?

4 A. That's correct.

5 Q. No mention of a duplicative tradeline in this letter?

6 A. No.

7 Q. So in response to this, do you recall saying that Ocwen
8 provided a response, and in that response it said it had
9 sent an automated universal data update? Do you remember
10 that?

11 A. Repeat that, please.

12 Q. So let me make sure we're talking about the same
13 terminology. You're aware of an AUD, or an AUD, a universal
14 data form that updates to all the credit bureaus?

15 A. Correct.

16 Q. You remember talking yesterday how in response to this
17 letter in March, 2014, Ocwen received it and then sent out
18 an update to all the credit bureaus; right?

19 A. That's, that's what I understood.

20 Q. So, again, in response to this letter, Ocwen is
21 responding to your concerns and doing something to update
22 all the other credit bureaus?

23 A. No, I don't agree with that because I'm telling them
24 it's still on there.

25 Q. I understand. But you, you talked about yesterday how

David Daugherty - Cross (Manning)

11

1 you know that Ocwen doesn't control what these third-party
2 companies, the credit bureaus report; right?

3 A. Well, according to -- the reason this letter even came
4 about, according to the lady from consumer credit, she told
5 me Ocwen can clear this up in less than 24 hours taking this
6 off my report.

7 MR. MANNING: I'm going to object to that
8 statement as hearsay, Judge, and move to strike.

9 THE COURT: Any objection, Mr. Nolan?

10 MR. NOLAN: No, Your Honor.

11 THE COURT: All right. I sustain that objection.

12 And, ladies and gentlemen, I order that you not
13 consider that portion of his answer that indicated what he
14 was told by the other person.

15 Go ahead, please.

16 MR. MANNING: Thank you, Judge.

17 BY MR. MANNING:

18 Q. Mr. Daugherty, what I'm -- my client's Ocwen and I'm
19 asking you about what you told Ocwen and what Ocwen did.
20 You understand that; right?

21 A. Yes.

22 Q. Okay. In response to this letter where you identified
23 these concerns and said, "Equifax is still doing something
24 wrong. Please help." Right?

25 A. That's correct.

1 Q. Ocwen did that by responding and updating not just
2 Equifax, but all the credit bureaus; right?

3 A. Well, you say you did. You're telling me they did. I
4 don't agree with it that they did it correctly, no, because
5 they're still on there.

6 Q. Okay. And the basis for you saying that is because
7 Equifax kept doing it?

8 A. No. The basis I'm saying that I keep -- I just can't
9 call Equifax. Go look up a number. You have to sit there
10 and write them each time. It takes six weeks to hear back
11 from them.

12 I'm saying that I got Ocwen on the phone on this
13 March 17th call, I believe that's when it was, and I'm
14 telling them that it's still on there and it kept getting
15 worse as 2013. They just kept piling it on through all of
16 2013.

17 Q. "They" being Equifax?

18 A. No. Well, it's being -- it's coming on the Equifax
19 report, but it's Ocwen's name on it.

20 Q. Okay. And, again, sir, you understand that Ocwen is a
21 separate business and doesn't control what Equifax does;
22 correct?

23 A. I, I believe it's going to come out that when it's
24 their name on it, they are going to be.

25 Q. My question to you is, do you personally understand it?

David Daugherty - Cross (Manning)

13

1 A. I don't agree with it.

2 Q. Okay. Do you know?

3 A. I'm just saying I don't agree with it. I feel it's
4 going to come out it won't be agreed with either.

5 Q. Let's look at the response just so that --

6 A. Okay.

7 Q. -- you can see it. It's Plaintiff's Exhibit 5. And
8 you recall talking about this yesterday; right?

9 A. Yes, I remember.

10 Q. This is the response from Ocwen to your prior letter
11 that we just looked at?

12 A. Sure.

13 Q. And Ocwen addresses those concerns and says, "We've
14 taken action. We are sending --" I'm sorry. On March 21st,
15 the third paragraph, 2014, "Our office submitted a request
16 to the four major credit reporting agencies, Equifax,
17 TransUnion, Experian, and Innovis, to reflect the current
18 balance of the loan in the amount of \$80,499.78." And then
19 it goes on to provide a confirmation number; right?

20 A. That's correct.

21 Q. So did you ever look that number up?

22 A. No, no, I did not.

23 Q. So there's a reference that you can track it if you
24 were interested to do so; right?

25 A. I wasn't aware of that.

1 Q. You see it in the letter?

2 A. I see it in the letter, yes, but I wasn't aware of
3 anywhere where I could go track it.

4 Q. And then below that it says, as I believe you've just
5 testified, "Unfortunately Ocwen is unable to control when
6 the credit reporting agencies will update their records."
7 Right?

8 A. That's correct.

9 Q. And as far as you know --

10 A. Well, I'm going to rephrase that. According to what I
11 was told, they could.

12 Q. Okay. And we're not going to ask about hearsay
13 statements. I'm just asking for your knowledge. Okay? In
14 the interim, Ocwen also volunteers that you may use this
15 letter, right, saying that, "We've updated the account to
16 all the credit bureaus?" Do you see that?

17 A. I'm having trouble finding it here.

18 Q. Sure. It's the last sentence of the same -- too much.
19 Last sentence of the same paragraph we were just looking at.
20 It begins, "In the interim."

21 A. Oh, yes, I see that.

22 Q. Okay. Can we scroll down?

23 You recall, Mr. Daugherty, that this is the one that
24 has a couple of subsequent responses embodied in it? Right
25 there. Okay. Thank you. So this is the comment that you

1 made regarding what was happening on the account; right?

2 A. Yes.

3 Q. And you identify that it's March, 2014, and in four
4 months you've got this balloon note due, so the full balance
5 is owed?

6 A. Yes.

7 Q. You identify the balance. And it goes on to describe
8 about halfway down, "I am usually getting monthly reports
9 from Experian, but a couple weeks ago I ordered credit
10 reports from all three reporting agencies." Do you see
11 where I'm reading?

12 A. Yes.

13 Q. And that's -- you're referring there to the
14 creditscore.com; right?

15 A. Yes.

16 Q. And it goes on to say, "Equifax shows on my credit
17 report that I was late on my mortgage payment by 120 days in
18 March, June, July, October, and December of 2014." Do you
19 see that?

20 A. I see that.

21 Q. That's incorrect; right?

22 A. That's incorrect.

23 Q. Okay. So here's another example where you're giving
24 information to Ocwen and telling them to investigate
25 something and you're giving them the wrong information;

1 right?

2 A. That date is wrong on that letter, but they've received
3 letters just like it with the correct date on it.

4 Q. And I'm asking you about this letter.

5 A. That, that date is wrong. January, 2014, it showed me
6 120 days late which also isn't on there.

7 Q. Okay.

8 A. So there was one in 2014.

9 Q. So the information that you identified as being wrong
10 in 2014 is inaccurate in this letter?

11 A. That's correct.

12 Q. You sent this letter in March, 2014, and it -- I mean,
13 obviously we can't know what's going to happen in the
14 future; right? So there's -- it's fair to say that Ocwen
15 understood that you intended 2013 because they responded
16 that way?

17 A. They --

18 MR. NOLAN: Your Honor, he's asking Mr. Daugherty
19 to speculate about what Ocwen understood. Ocwen can testify
20 about what it understood at a later time.

21 THE COURT: That objection is sustained, Mr.
22 Manning.

23 MR. MANNING: I'll rephrase.

24 BY MR. MANNING:

25 Q. This letter is about 2014. Ocwen responded about 2013.

1 Right?

2 A. I believe so.

3 Q. So even though you put in the wrong information, Ocwen
4 addressed the 2013 issue; right?

5 A. I'm not sure if they addressed that or not. I don't
6 think they did because it was never taken off.

7 Q. Okay. And, again, let's go back up to the first piece.
8 You see where Ocwen is talking about 2013; right?

9 A. Okay.

10 Q. Because that's the relevant period of time even though
11 you identified a different period of time; right?

12 A. Yes.

13 Q. Okay. Thank you. There's nothing attached to this
14 letter; right?

15 A. That's correct I believe.

16 Q. And there's no subsequent letters?

17 A. I believe that's correct.

18 Q. Okay. So we've talked about a March, 2013, letter;
19 then a year goes by; a March, 2014, letter; and then this
20 subsequent letter?

21 A. Yes.

22 Q. Those are your written communications with Ocwen?

23 A. And they also had my phone number. Their research
24 department could have called me.

25 Q. Okay. And we can talk about calls.

1 A. If they wanted to investigate, they could have called
2 me.

3 Q. Right now I'm just trying to understand all the
4 universe of your written communications with Ocwen. We've
5 identified three. The information you're providing is
6 inaccurate on all three. Correct?

7 A. I see on two.

8 Q. We talked about this creditscore.com briefly in
9 response where you say you had recently -- if we could go
10 back down to Mr. Daugherty's entry where you identified that
11 when you ordered the credit reports from all three, that's
12 the creditscore.com report that you're referring to; right?

13 A. Yes.

14 Q. You're, you're aware that your creditscore.com report
15 is not prepared by Equifax; right?

16 A. That's correct.

17 Q. Again, creditscore.com --

18 A. That's the name of the company.

19 Q. We've been talking about roles a lot. Creditscore.com
20 is a separate business?

21 A. That's correct.

22 Q. And what they purport to do is to gather the
23 information from those three credit bureaus, Experian,
24 Equifax, and TransUnion; right?

25 A. Yes.

1 Q. And then put it into a report, and that's how you get
2 it?

3 A. That's correct.

4 Q. But you don't know how creditscore.com prepares that
5 report?

6 A. No, I would not.

7 Q. You don't know if it's accurate or not?

8 A. Well, I should know if it's accurate or not by looking
9 at it I would think. I would know where I stood on each one
10 of those accounts.

11 Q. What I'm asking you is because you don't know how
12 creditscore.com gathered that information or prepared that
13 document, you don't know what that document is representing
14 as those three other businesses are showing is accurate or
15 not. You're just taking it at face value.

16 A. You're taking it at face value. But if you see an
17 inaccuracy, it's right there for you to dispute.

18 Q. Let me re-ask the question.

19 A. Okay. We're not on the same page on this because it
20 should be correct when you look at it.

21 Q. I understand your testimony to be it should be correct
22 and you should be able to rely on it because creditscore.com
23 is providing you something. My question to you, sir, is you
24 don't know yourself whether it's accurate or not because you
25 don't know how it was prepared?

David Daugherty - Cross (Manning)

1 A. Yeah. I do not know how they prepared it. That's
2 correct. But when I look at it, it should be correct.

3 Q. And you didn't undertake to compare a credit report
4 from Equifax itself with creditscore.com. You were relying
5 on creditscore.com, a third party; right?

6 A. That's correct.

7 Q. And all of this dispute focuses on what Equifax is
8 reporting, but you never even undertook to obtain the credit
9 report directly from Equifax; right?

10 A. Well, when everybody -- when all the other refinance
11 companies are showing me and telling me that it's in there,
12 I'd have to take creditscore.com's word that it's correct.

13 Q. Okay. And you may be reasonable. My question to you,
14 sir, is you didn't undertake to obtain the Equifax credit
15 report direct even though they're the ones that you had the
16 problem with?

17 A. I sent complaints to Equifax also.

18 Q. Okay.

19 A. If I sent them to Equifax, they should sit there and
20 send one back saying it, and they always come back that it's
21 correct.

22 Q. Sir, I believe the question is a "yes" or "no"
23 question.

24 A. Okay.

25 Q. Let me re-ask it. At any point did you undertake to

1 actually obtain your credit report from Equifax and compare
2 it to the credit score which you were relying on?

3 A. No, I didn't buy a credit report specifically from
4 Equifax.

5 Q. Thank you, sir. We'll talk briefly about the
6 creditscore.com report. Do you recall being asked about
7 that in your deposition?

8 A. Yes.

9 Q. Do you recall being shown a creditscore.com credit
10 report dated April 17th, 2014, that had scores from those
11 three credit bureaus and the Experian score was higher than
12 the Equifax score? I'm sorry. I said that wrong. The
13 Equifax score was higher than the Experian score. Do you
14 recall that?

15 A. I, I'd have to be -- I've seen so many forms, I can't
16 really say I recall that.

17 Q. Sure. So let's go to your deposition, Page 77. Oh,
18 yes. We're going to take this off publishing just so I can
19 show him his deposition. Thank you. Okay.

20 So you'll see here, sir, on Page 77 and it's line -- it
21 begins the discussion around line 10 where it talks about,
22 "We're going to turn back to the creditscore.com report."
23 And then it says -- if we go to Page 38 of the
24 creditscore.com report, it gives you your three credit
25 scores. Right?

David Daugherty - Cross (Manning)

1 MR. NOLAN: Your Honor, I'm going to object to the
2 use of the creditscore.com report. Mr. Manning has
3 proffered that there were reliability issues potentially
4 with this report. It's a hearsay document. It's not
5 admitted into evidence. It's not admitted as an exhibit.
6 And any reliance on it through the deposition is misplaced
7 at this point.

8 THE COURT: You all come to the bench, please.
9 (Bench conference on the record)

10 THE COURT: It hasn't been published to the jury;
11 is that correct?

12 MR. NOLAN: That's correct, Judge.

13 THE COURT: Mr. Manning, you are using it to
14 question the witness. Tell me where you're going with that.

15 MR. MANNING: To refresh his memory. He had this
16 report. The date -- it's the same report that I just asked
17 him about. He was asked about it in his deposition and the
18 same date. And I was going to ask him about whether he
19 recalled the scores of that being shown on that document.
20 And it was discussed in his deposition. I'm not going to
21 admit it.

22 MR. NOLAN: Your Honor, this --

23 THE COURT: I'm sorry. It's your position that
24 there is something there that's inconsistent with his
25 testimony here today?

David Daugherty - Cross (Manning)

1 MR. MANNING: Yes.

2 THE COURT: What you're impeaching him with from
3 his deposition?

4 MR. MANNING: Correct.

5 THE COURT: I'm sorry. Go ahead, Mr. Nolan.

6 MR. NOLAN: I apologize, Your Honor. You know, we
7 can withdraw our objection. I would just note that this
8 sounds eerily similar to the arguments they're making about
9 the Equifax documents which they have not disclosed this
10 credit score report under 26(a) at any point.

11 They're using it to impeach the witness, and I think we
12 intend to use the Equifax reports at a later date with
13 Ocwen's witness for the same purpose as we move forward on
14 this today.

15 THE COURT: All right. You trailed off and I
16 thought you were done. I apologize for the interruption.

17 MR. NOLAN: I'm sorry.

18 THE COURT: If the witness was questioned during
19 the deposition using this document and if he has given
20 inconsistent testimony -- I don't have the advantage of
21 having seen the deposition testimony. But if he has given
22 inconsistent testimony today, I'm going to overrule the
23 objection because I believe it would be appropriate
24 impeachment under those circumstances.

25 MR. NOLAN: Yes, Your Honor.

David Daugherty - Cross (Manning)

1 MR. MANNING: At this point, Your Honor, I just
2 want it to be clear we're not seeking to admit this.

3 THE COURT: You've said that. Even I understand
4 that, Mr. Manning.

5 MR. MANNING: Okay. For impeachment purposes you
6 don't have to list exhibits. You can use anything to
7 impeach.

8 MR. NOLAN: That's correct. I agree.

9 THE COURT: I don't need a lesson on impeachment.
10 I've already ruled that you're able to use it. But in order
11 for there to be an inconsistency, the same question has to
12 have been asked and an inconsistent answer been given here.

13 So if you had not used this document with him during
14 the course of the deposition and you're using it now, it
15 would not be proper impeachment. That's the reason I asked
16 if it had been used.

17 MR. MANNING: Yes.

18 THE COURT: I overrule the objection, preserving
19 the plaintiff's objection --

20 MR. NOLAN: Yes, Your Honor.

21 THE COURT: -- and exception.

22 Counsel, one more thing here before I forget.

23 Ms. Brown, would you join us here at the bench, please.

24 (Juror Lindsay Brown approached the bench.)

25 THE COURT: I don't want to single you out and

David Daugherty - Cross (Manning)

1 embarrass you. You have a graduation this evening?

2 JUROR LINDSAY BROWN: It's at 6:00.

3 THE COURT: All right. If we can adjourn at 4:00,
4 does that help you?

5 JUROR LINDSAY BROWN: Yes, ma'am. I think even
6 4:30 I would be fine.

7 THE COURT: Okay. I wanted to let you all know
8 because it happened outside of your presence and the
9 bailiff, court security officer after trial yesterday let me
10 know that Ms. Brown had a nephew graduating and she wanted
11 to attend at Pipestem. And, so, we'll adjourn at 4:00.

12 JUROR LINDSAY BROWN: Thank you.

13 THE COURT: I don't want you speeding.

14 JUROR LINDSAY BROWN: Okay. Thank you.

15 THE COURT: All right. Thank you all.

16 (Bench conference concluded)

17 BY MR. MANNING:

18 Q. Mr. Daugherty, you have in front of you the deposition
19 transcript. You can confirm now that you were asked about
20 the creditscore.com report that you obtained that was dated
21 April 17th, 2014; correct?

22 A. Yes.

23 Q. And during your trial testimony yesterday you said you
24 didn't recall what the scores were; right?

25 A. That's correct.

1 Q. And here the question asked is: "So the Experian score
2 is actually lower than the Equifax and TransUnion scores."
3 Do you see that?

4 A. Yes.

5 Q. And then your answer, sir, can you read that?

6 A. Yes, they showed that to me. I said I understood.

7 Q. And your answer was, "Yes, I do."

8 A. I understand that.

9 Q. Okay. So in your deposition you confirmed, based on
10 your creditscore.com report, that the Experian score, which
11 is not reporting anything wrong as far as you're concerned,
12 was lower than the Equifax and TransUnion scores; right?

13 A. Yes. I think that was after the liability was put on
14 there with the state, the lien with the state.

15 Q. Thank you. During your testimony with Mr. Nolan you
16 talked about how at a point in time after the lawsuit was
17 filed Equifax stopped reporting on the Ocwen account; right?

18 A. Yes.

19 Q. And that was -- the date you provided was
20 September 23rd, 2014; right?

21 A. That's correct.

22 Q. So that's the point at which the issue that you had
23 with the, with the Equifax credit report and the duplicative
24 tradeline with Ocwen was no longer an issue?

25 A. That's correct.

1 Q. But you still didn't qualify for refinance; right?

2 A. Yes, I was pre-approved.

3 Q. That wasn't until February, 2015; correct?

4 A. That's correct.

5 Q. Okay. So the score came -- the bad report by Equifax
6 that you're complaining about came off with the duplicative
7 tradeline September, 2014, but you didn't receive approval
8 for a refinance until February, 2015; correct?

9 A. That's correct.

10 Q. So even though it was corrected by Equifax at this
11 point, you still weren't able to qualify for refinance?

12 A. They knew about this lawsuit.

13 Q. Okay. I don't think that's responsive to my question,
14 sir. September, 2014, the issue with Equifax is resolved,
15 but you personally are still unable to obtain financing;
16 correct?

17 A. Yes.

18 Q. So at that point, the full balance is owed by you to
19 Ocwen; right?

20 A. Yes.

21 Q. And that became due in the end of July of 2014?

22 A. That's correct.

23 Q. And you had testified that you understood that you had
24 to make the full payment, the full balance amount?

25 A. That's correct.

David Daugherty - Cross (Manning)

1 Q. And you understood that because you saw the note and
2 Ocwen reminded you about it; right?

3 A. Yes.

4 Q. Okay. And during your testimony with Mr. Nolan you
5 said you tried to pay. And I wanted to clarify that. You
6 didn't try to pay the full amount; correct?

7 A. No. I tried to pay until this was all taken care of.
8 I wanted to go ahead and continue payments until this was
9 resolved.

10 Q. You talked about letters that you received from Ocwen
11 giving you instructions about how to make that full balance
12 payment when it was due; right?

13 A. Yes.

14 Q. For identification purposes I'd like to --

15 A. They didn't give me instructions. They just said that
16 I'd have to have refinancing or pay it in full was the two
17 choices.

18 Q. So they didn't give you any instructions on how to --

19 A. Well, I mean, I guess you could consider that as
20 instructions. They gave me two choices.

21 Q. Thank you. I'd like to show you one of those letters
22 for identification purposes. If we could put up the Ocwen
23 letter, February 5th, 2014, for the witness only at this
24 point.

25 You'll see in this letter, Mr. Daugherty, that the

1 subject line has "balloon letter" and it's addressed to you
2 at your residence; right?

3 A. Yes.

4 Q. And the first paragraph -- and it identifies the loan
5 number. That's the correct Ocwen loan number, just one
6 loan; right?

7 A. I see the number.

8 Q. And in the first paragraph it states, "This letter is
9 to notify you that your loan is due to mature on July 26th,
10 2014." Correct?

11 A. That's correct.

12 Q. It goes on to state, "We are providing you notice of
13 the upcoming maturity date to allow you sufficient time to
14 secure alternate financing for your loan." Do you see that?

15 A. Yes.

16 Q. "This loan must be paid in full on or before the
17 maturity date." Correct?

18 A. That's correct.

19 Q. "Only the total payment will be accepted once the loan
20 matures." Correct?

21 A. Yes.

22 Q. "We will not accept any mortgage payments beyond the
23 maturity date." Right?

24 A. That's what it says, but they did.

25 Q. Those are all instructions that Ocwen provided to you

1 about when this is all due, you have to pay the full amount;
2 right?

3 A. That's correct.

4 Q. And they gave you this notice, at least this letter,
5 five months before -- over five months before it became due?

6 A. That's correct.

7 Q. And then it goes on to describe towards the bottom of
8 the letter, "Your final payment should be made payable to
9 Ocwen Loan Servicing and be mailed or delivered to the
10 following address," and it gives an address. Right?

11 A. Yes.

12 Q. This was not able to be paid on-line; right?

13 A. That's what it says.

14 Q. So trying to make payments on-line wouldn't work
15 according to this letter; right?

16 A. It says the final payment, but they took an extra
17 payment.

18 Q. Okay. And you also said that they stopped accepting
19 any payments; right?

20 A. Yes.

21 Q. And this letter explains why, because the full balance
22 was owed and they had told you they weren't going to --

23 A. Well, the person that wrote this letter probably didn't
24 know what was going on with this account too.

25 Q. I'm sorry, sir. I hadn't finished my question.

1 A. I'm sorry.

2 Q. If you could wait for me to finish.

3 A. Sure.

4 Q. According to this letter, you understood that the full
5 balance was due and there were no further scheduled payments
6 after that; right?

7 A. Not in that case because I knew there was a problem
8 with this. I was hoping this was going to be addressed and
9 that's why I was going to go ahead and keep making payments
10 until it got addressed so I could secure financing.

11 Q. You've already said that even after Equifax removed it,
12 you couldn't get financing; right?

13 A. I was pre-approved for financing until this, the red
14 flags came up where Ocwen added another \$15,000 in interest
15 to it and they saw the lawsuit and then it was stopped.

16 Q. Okay. Tell me if you're changing your testimony, sir.
17 You said you were not pre-approved by Quicken Loans until
18 February, 2015; correct?

19 A. Yes.

20 Q. You're not changing that testimony; right?

21 A. I'm trying to go by what they had told me.

22 Q. Okay. So the first time you got that approval after
23 Equifax corrected its problem September, 2014, was October,
24 November, December -- five months later; right?

25 A. That's correct.

1 Q. Now, even after you obtained that pre-approval from
2 Quicken Loans, you still didn't pay Ocwen the balance that
3 was due all the way back in July, 2014; correct?

4 A. That's correct because it was held up with this
5 lawsuit.

6 Q. But you don't dispute the debt itself?

7 A. I don't dispute the debt, no.

8 Q. You --

9 A. I don't dispute any debt that I've had.

10 Q. You owe it and you haven't paid it and you know you
11 need to pay it; right?

12 A. I know I need to pay it. I sure would have appreciated
13 some help fixing it so I could get the refinancing. That's
14 all I had requested all along.

15 Q. You've already agreed that everything was fixed by
16 September, 2014, but you still even today, over a year and a
17 half later, haven't paid off that loan; correct?

18 A. That part is correct. But it goes right back to where
19 even with the One Community Bank financing, if they would
20 have given me a letter saying that all this was, was wrong
21 on my report, One Community would have gone ahead and given
22 me the financing.

23 Q. That's speculation on your part; right?

24 A. No, it's not speculation. It's what they told me.

25 Q. Okay.

David Daugherty - Cross (Manning)

1 MR. MANNING: Objection, move to strike, Judge.
2 It's hearsay.

3 THE COURT: Counsel.

4 MR. NOLAN: Your Honor, it's responsive to the
5 question that he was asked.

6 THE COURT: I overrule the objection, Mr. Manning.
7 And I overrule it based on the question before the last
8 question.

9 MR. MANNING: Okay.

10 THE COURT: In other words, you were asking
11 whether or not there was a basis for his answer, and that's
12 the basis that he gave to you.

13 MR. MANNING: Let me try it this way.

14 BY MR. MANNING:

15 Q. We can all agree, Mr. Daugherty, that Equifax's problem
16 with the duplicative tradeline had been corrected by Equifax
17 September, 2014. You were unable to obtain financing until
18 February, 2015. And even after you got that 2015
19 pre-approval letter, even today, a year and a half later,
20 you haven't paid off Ocwen's loan; correct?

21 A. Yes, I have not paid that loan off.

22 Q. Thank you. During the time period that you were
23 claiming Equifax was reporting something wrong on your
24 account and you told Ocwen and Ocwen confirmed, "We're not
25 furnishing any data that you're late --" you recall that

1 testimony; right?

2 A. Repeat that again, please.

3 Q. Okay. I was just trying to orient you. I'm trying not
4 to redo yesterday. So yesterday you talked about how you
5 were complaining about the Equifax credit reporting of this
6 duplicative tradeline that had the wrong information. And
7 you talked with Ocwen about it, and Ocwen confirmed to you
8 both on the phone and in writing, "Ocwen is not furnishing
9 any data to the Credit Bureau that you're late in those
10 months." Correct?

11 A. They were saying that they're in the clear on this.

12 Q. Okay.

13 A. And I was saying they weren't.

14 Q. During those months when you were being reported as
15 late on this second tradeline with Equifax, you weren't
16 receiving default letters from Ocwen; right?

17 A. No. They were telling me on the phone that I was
18 clear, and I was telling them that I wasn't clear on the
19 credit reports.

20 Q. And you had been in default with your Ocwen loan
21 before, so you knew that when you're unable to pay on time
22 they send you a notice that says you're past due; right?

23 A. That's correct.

24 Q. And during those months when Equifax separately is
25 reporting something wrong, Ocwen isn't sending you any

David Daugherty - Cross (Manning)

1 letters saying you're late; right?

2 A. That's correct, but I'm telling them they are, or it's
3 coming out that way.

4 Q. From Equifax; correct?

5 A. I'm saying it's on my credit report.

6 Q. Thank you. Now, yesterday there was some testimony
7 that -- we talked about the three letters. And you also
8 said that you had had calls with Ocwen. And I think your
9 testimony yesterday was at least during one of those
10 calls -- I think you said there were three calls discussing
11 your credit report with Ocwen. And at least during one of
12 those calls, you told Ocwen about a duplicative tradeline.
13 Is that accurate?

14 A. I, I believe so.

15 Q. Okay.

16 A. I believe I said that yesterday, yes.

17 Q. So there were three calls --

18 A. We, we -- the last call that I had with Ocwen is when
19 we went in-depth with different things and we talked about
20 the case situation that I was talking to the person about
21 even though while I was requesting the letters. But I was
22 trying to explain it and that was included.

23 Q. So you're claiming that there was a call with Ocwen in
24 which you told somebody at Ocwen that there was a
25 duplicative tradeline on your Equifax report?

1 A. Yes. I was trying to explain the whole situation to
2 the person. You have to explain -- every time you talk to a
3 different person, you end up pretty much saying your whole
4 side about what's going on to try to make them understand.

5 Q. You don't have any memory or knowledge of who you
6 talked to or when that call was, do you?

7 A. I believe that was the one in March of 2014.

8 Q. Okay. Do you recall being asked at your deposition
9 whether you ever told anyone about Equifax reporting a
10 duplicative tradeline?

11 A. No, I don't remember.

12 Q. Okay. Let's look at the deposition. So for the
13 witness's sake, can we just show him the page number? Page
14 31 from your deposition, sir.

15 And if we go to the section where, a little above that,
16 there you go, the question is: "Do you know if either you
17 or Aggressive Credit Repair did anything to tell Ocwen that
18 the account was appearing twice, that the Ocwen account was
19 appearing twice and should not be?" Do you see that
20 question?

21 A. Yes.

22 Q. Your answer, sir, "I did explain that to Lorin Hanks
23 and he supposedly was going to send a letter trying to
24 dispute that being on there twice for the same account." Do
25 you see that?

1 A. Yes.

2 Q. We've already talked about how you had nothing to do
3 with the letters and they don't show a disputed duplicative
4 account, but you weren't involved with that; right?

5 A. That's correct.

6 Q. Okay. And then the following question: "So you
7 explained to Lorin Hanks that the Ocwen account was
8 appearing twice. Did you explain that to anyone else?" Do
9 you see that?

10 A. I see that.

11 Q. Okay. And then your answer, sir: "I'm trying to
12 think. I think I might have explained it to Consumer
13 Financial, a lady there." That was your answer; right?

14 A. Yes.

15 Q. You were referring to the Consumer Financial Protection
16 Bureau?

17 A. Yes.

18 Q. The following question is: "And was there anyone
19 else?" Do you see that question?

20 A. I see that.

21 Q. And your answer is, "I don't believe so." Right?

22 A. That's correct.

23 Q. Let's go to the top of this deposition, the first page,
24 so that you can see the date, June 17th, 2015. So this was
25 already a while ago, almost a full year ago; right?

1 A. Yes.

2 Q. And that would have been a full year closer to whatever
3 alleged conversation you had with Ocwen than today; right?

4 A. Yes.

5 Q. And you never said you told Ocwen during your
6 deposition despite being asked; right?

7 A. That was something I slipped up on. I just don't -- at
8 the time when I was trying to think of one thing, I forgot
9 the other.

10 Q. In fact, sir, the first time you ever said that was in
11 trial; right?

12 A. That's -- yeah, that's the first time it really came up
13 after this.

14 Q. Let's go to Page 4 of the deposition. So the bottom of
15 this page, do you recall being asked, "This is the
16 opportunity for my client to find out what you know, what
17 your testimony will be at trial. And this is a deposition,
18 which means that it's taken under oath. So you're swearing
19 that everything you say is true and accurate to the best of
20 your knowledge."

21 And your answer is, "Yes;" correct?

22 A. Yes.

23 Q. You understood that --

24 A. That's correct.

25 Q. -- this deposition a year ago was my client's

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1 opportunity to hear your full testimony and you never
2 told --

3 A. That's correct.

4 Q. -- Ocwen --

5 A. There's times -- when you're trying to think at
6 different times where you're under pressure, there's times
7 you forget things.

8 Q. And over a year ago, which is much closer to that, you
9 never said it happened; right?

10 A. That's correct.

11 Q. Now, let's turn to Page 89. This is at the end of the
12 deposition. At the conclusion of your questioning during
13 your deposition the question was asked: "Do you have any
14 other testimony today to support your claims other than what
15 you've already told me?" Do you see that question?

16 A. Yes.

17 Q. And your answer is, "No, I don't."

18 A. That's correct.

19 Q. Thank you. I have no further questions.

20 THE COURT: Redirect of this witness, Mr. Nolan?

21 MR. NOLAN: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. NOLAN:

24 Q. Okay. Mr. Daugherty, on your screen we have what has
25 been admitted as Exhibit Number 2; correct?

1 A. Yes.

2 MR. NOLAN: May we go ahead and publish this?

3 BY MR. NOLAN:

4 Q. And now there's a question about when this was sent
5 because the date -- you input March 14th, 20- was not filled
6 out. Was there any other way to identify the date this
7 document was transmitted?

8 A. It's right there at the top, March 14th, '13.

9 Q. There's a fax transmittal. When was the --

10 A. At 8:36 p.m.

11 Q. At 8:36 p.m., down to the minute, okay. So in your
12 letter again you state, "I am currently behind." Correct?

13 A. That's correct.

14 Q. Do you state anything in your letter about 2012?

15 A. No.

16 Q. Now, Ocwen was concerned that your attachment which
17 again -- when was this transmitted?

18 A. March 14th, '13.

19 Q. This was clearly attached to the document you sent?

20 A. Yes.

21 Q. Ocwen was concerned that you only attached this single
22 page to your dispute.

23 A. Yes.

24 Q. Why did you only attach one page to your dispute?

25 A. That was the only one that was incorrect.

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1 Q. Did you think Ocwen needed to have additional pages
2 about --

3 A. I don't think they needed to see the correct ones. It
4 was the one that was incorrect I wanted fixed. And that's
5 just the first month. I had all throughout the rest of the
6 year month after month after month.

7 Q. And, so, in your letter you said, "I am currently
8 behind."

9 A. I'm currently, yes.

10 Q. It says, "I'm currently behind." And then the document
11 Equifax pointed out ends in 2012; correct?

12 A. Yes.

13 Q. So when the investigator reviewed this document, when
14 did you get a call to follow up about that issue?

15 A. I never did get a call to follow up with it.

16 Q. They never called you?

17 A. No.

18 Q. They were concerned about this issue?

19 A. Supposedly. I didn't see that.

20 Q. Did they send you a letter asking you to follow up
21 about --

22 A. No.

23 Q. -- what you said currently and maybe 2012?

24 A. No.

25 Q. They never contacted you in 2013 about this letter?

1 A. No, not about this letter.

2 Q. Before responding about 2012?

3 A. No.

4 Q. I want to move back to -- this was Exhibit Number 4.

5 This is the second letter you sent to Ocwen; correct?

6 A. That's correct.

7 Q. And, again, can we identify when this was sent?

8 A. March 19th, 2014.

9 Q. And that's because you faxed it in?

10 A. Yes. I believe I also -- I sent this in by registered
11 mail too.

12 Q. And Ocwen again asked you -- they were concerned
13 because there was only a partial credit score report here;
14 correct?

15 A. Yes.

16 Q. Why didn't you attach the other documents of the credit
17 score report?

18 A. Because they were correct.

19 Q. Were you disputing --

20 A. I'm only disputing the negative things that was wrong
21 that was causing the whole problem with the refinancing.

22 Q. And then to help Ocwen identify your specific dispute
23 again you directed them to what you were disputing at that
24 point?

25 A. Yes.

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1 Q. And, again, when Ocwen got this partial report, if they
2 were concerned, they called you; right?

3 A. I never did receive a call.

4 Q. Their investigator sent you a letter asking you to
5 follow up?

6 A. Their research department never did follow up.

7 MR. MANNING: Objection, leading.

8 THE COURT: The objection to leading is sustained,
9 Mr. Nolan.

10 BY MR. NOLAN:

11 Q. Did anyone ever contact you from the research
12 department?

13 A. No.

14 Q. I direct your attention now to what is Exhibit Number
15 5. Now, again, Ocwen was concerned in your letter that you
16 sent to them -- this was your complaint to them?

17 A. Yes.

18 Q. Your complaint -- can you again state what your
19 complaint was to Ocwen?

20 A. My complaint was that they had my report wrong.

21 Q. In what ways?

22 A. They had me 120 days late March, June, July, October,
23 and December.

24 Q. And, now, you sent this to the CFPB in March, 2014; is
25 that right?

1 A. Yes.

2 Q. And what's the date you put on the, on your letter?

3 A. I'm trying -- I'm having trouble seeing it here.

4 Q. Ocwen was concerned you put the date 2014 on your
5 letter; correct?

6 A. Yes.

7 Q. Now, obviously, December, 2014, hadn't come to pass yet
8 at this point; correct?

9 A. No.

10 Q. So when Ocwen got this dispute with the date that
11 obviously doesn't make sense, when did they contact you to
12 clarify this issue?

13 A. They, they did not contact me.

14 Q. They never wrote you to follow up about this issue?

15 A. No.

16 Q. You never got a call from an investigator?

17 A. I never got called.

18 Q. Once again, please describe -- identify all the
19 disputes you make about your tradeline in this letter.

20 A. Could you repeat, please?

21 Q. Please identify every issue you identified to the CFPB
22 in this letter for us.

23 A. Well, I, I explained to them that my house has a
24 balance of \$80,000 and the house has a value of \$165,000,
25 and that I'll have to refinance my house to keep my house.

1 And I explained to them that we had some bad financial
2 times a few years ago and that we recently have been all
3 about getting my accounts paid off. I even hired a credit
4 repair company to try to help. I'm not getting very good
5 responses with the financial companies due to the reports.

6 Q. Can you focus in for us on the specific issues with
7 your tradeline from Ocwen that you were having -- that you
8 identified in this letter?

9 A. Okay. The specific issues was the 120 days late March,
10 June, July, October, and December and January, 2014. And
11 that's probably -- I must have left out January for some
12 reason.

13 Q. And you also identified a past due amount; correct?

14 A. Yes. They showed I was currently past due \$6,178.
15 That says 78 dollars.

16 Q. Okay. So we looked at this response from Ocwen, and
17 Ocwen's quite proud that they sent a form updating your
18 balance due. Does this response address the issues you
19 raised in your letter?

20 A. No.

21 Q. What issues did Ocwen fail to address in this response?

22 A. They didn't address any of the issues that I had.

23 Q. So rather than investigating and contacting you, what
24 did they do?

25 A. They basically sank me. I felt like I was a ship going

1 down and they was the anchor.

2 Q. Explain that.

3 A. With, with everything I was trying to do to try to get
4 this fixed, it just seemed like I wasn't receiving any help
5 from Ocwen whatsoever with this being their name on the
6 credit line.

7 MR. NOLAN: This hasn't been admitted as an
8 exhibit yet. I apologize. If we could mark this for
9 identification purposes as Plaintiff's 10 I believe.

10 BY MR. NOLAN:

11 Q. Now, this is the letter we just looked at with Ocwen
12 from February, 2014. Do you recall reading this letter?

13 A. Yes.

14 Q. What letter was this?

15 A. This is the balloon letter notifying me that the loan
16 was going to mature July 26th, 2014.

17 Q. And Ocwen sent you this letter?

18 A. Yes.

19 Q. And you received it in the mail?

20 A. Yes.

21 MR. NOLAN: Your Honor, I would move the admission
22 of Plaintiff's Exhibit Number 10.

23 THE COURT: Any objection, Mr. Manning?

24 MR. MANNING: No objection.

25 THE COURT: Plaintiff's Exhibit Number 10 will be

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1 admitted into evidence without objection and can be
2 published.

3 MR. NOLAN: May we publish it, please?

4 BY MR. NOLAN:

5 Q. Now, you received this letter February, 2014; correct?

6 A. Yes.

7 Q. Did you need a reminder that you had a balloon note
8 coming due?

9 A. I didn't need a reminder, no. I was already concerned
10 about it.

11 Q. You read the line that Ocwen will not accept any
12 mortgage payments beyond the maturity date; correct?

13 A. Yes.

14 Q. Was that true?

15 A. No. They accepted one more.

16 Q. They disregarded their own statement?

17 A. Evidently.

18 Q. Okay. And, so, we were looking at your deposition. We
19 can remove the publication at this point. Let's make sure
20 we get the complete record.

21 On Page 45 do you recall being asked, "So you never
22 told Ocwen directly that the account was appearing twice in
23 your Equifax credit report; correct?" And what was your
24 response?

25 A. "Not until later."

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1 Q. So during the deposition you did tell them "not until
2 later"?

3 A. Yes.

4 Q. Okay. But we didn't see that in the cross-examination
5 of you?

6 A. No, we didn't see that.

7 Q. But you did let them know?

8 A. Yes, it is in this deposition after all.

9 MR. MANNING: Objection, leading, Judge.

10 THE COURT: The objection to leading is sustained,
11 Mr. Nolan.

12 BY MR. NOLAN:

13 Q. Mr. Daugherty, is the stress that you suffered in this
14 case related directly to credit denial?

15 A. Absolutely.

16 MR. MANNING: Objection. This is outside the
17 scope of the cross.

18 MR. NOLAN: Your Honor, the cross --

19 THE COURT: Response, counsel.

20 MR. NOLAN: -- introduced multiple credit denials
21 asking the effect of those on him. And I think this goes to
22 reaffirm that the damages are beyond those of just credit
23 denials at this point.

24 THE COURT: I sustain the objection based on my
25 recollection of the parameters of cross-examination.

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1 MR. NOLAN: Yes, Your Honor.

2 MR. MANNING: Thank you, Judge.

3 BY MR. NOLAN:

4 Q. I just want to ask one more time. How many times did
5 Ocwen contact you during the period of March, 2013, to July,
6 2014, when you're disputing this account?

7 A. They never did.

8 Q. They never followed up.

9 MR. NOLAN: That's all I have, Your Honor.

10 THE COURT: You can step down.

11 (Witness stepped aside.)

12 THE COURT: Call your next witness.

13 MR. BROADWATER: Your Honor, at this time we'd
14 like to read the deposition transcript of Latonya Munson
15 into the record. We've already provided a copy to defense
16 counsel stating what we would not read so we can get through
17 it a little faster.

18 THE COURT: All right. Mr. Manning.

19 MR. MANNING: Judge, this is the Equifax issue.

20 THE COURT: Uh-huh.

21 MR. MANNING: And we object to any portion of it
22 being read because it's not relevant, untimely, and it
23 shouldn't be admitted for any purpose.

24 THE COURT: All right.

25 Ladies and gentlemen, I'm going to give you a brief

1 recess. While you're out, do not discuss this case among
2 yourselves or permit anyone to discuss it with you or in
3 your presence. And please be in your jury lounge at 20
4 minutes after the hour. We'll stand in recess for your
5 purposes.

6 (Jury retired to the jury room at 10:07 a.m.)

7 THE COURT: All right, counsel, this testimony, as
8 I recall, has to do with the ACDVs that the defendant has
9 objected to as not previously being disclosed or identified
10 as exhibits, and also based on hearsay. There was an
11 objection to my permitting the deposition in this particular
12 case if it's the witness that I'm thinking of.

13 And I take it, Mr. Young, that you have something that
14 you want to present on the issue.

15 MR. YOUNG: Yes, Your Honor. I want to present
16 two things before I ask the Court to rule upon the
17 admissibility of the ACDV reports of the completed
18 investigation which happen to be printed out on the Equifax
19 letterhead as opposed to those printed out on the defendant
20 Ocwen's letterhead.

21 THE COURT: All right. I have read the written
22 submissions relative to this issue as well. Go ahead,
23 please.

24 MR. YOUNG: Okay. Now, what I want the -- my
25 portion -- or I'm going to read -- I want to read the entire

1 deposition because I go through all the -- I ring all the
2 bells, jump through all the hoops to properly authenticate
3 the documents.

4 And then the cross-examination takes over and Mr.
5 Manning proves my case for me because he elicits from the
6 witness the fact that these are, in fact, not only what
7 Equifax sent to Ocwen, but these documents also contain the
8 information supplied by Ocwen and sent back to Equifax. He
9 establishes that very clearly in his cross-examination of
10 the witness.

11 And then before I offer these in evidence, I'm going to
12 offer a portion of the 30(b)(6) deposition which I can
13 designate. I have designated here wherein the 30(b)(6)
14 witness testifies that the Ocwen -- excuse me -- that the
15 Equifax documents are mirror images of the Ocwen documents;
16 that it's an electronic system; that it's all done through
17 data.

18 And there can be no doubt after reviewing the 30(b)(6)
19 witness deposition that, in fact, these documents are
20 reliable. They are authentic. If they don't fall under the
21 business rule exception, they clearly fall under Rule 807
22 which is the residual exception that if something is
23 trustworthy, it ought to be admissible as an exception to
24 hearsay.

25 And I can't address this without addressing the whole

1 issue of candor with the Court. And that is Ocwen has the
2 counterparts to these documents. They absolutely have them.
3 Their 30(b)(6) witness assured us that they were in the
4 thousand and some pages of the -- when we went to Virginia
5 Beach to take their deposition we were assured that we were
6 given those. So we know they exist.

7 THE COURT: I'm sorry. You were assured that you
8 were given those by Ocwen?

9 MR. YOUNG: Ocwen's 30(b)(6) witness.

10 THE COURT: I just wanted to make sure. I've read
11 it but I wanted to make sure that that is what you're
12 saying.

13 MR. YOUNG: Right. When Mr. Nolan asked, "Where
14 are those?" She said, "They're in there." And let me also
15 point out the 30(b)(6) witness --

16 THE COURT: Does "in there" mean in the documents
17 that were disclosed to the plaintiff?

18 MR. YOUNG: That's the way we interpret it, Your
19 Honor. I can read the -- this came from Equifax like I
20 said. This is Mr. Nolan speaking. "I don't recall seeing
21 the response form from Ocwen to this specific dispute.
22 Other disputes in here we're going to go over. Ocwen's
23 response forms are included and attached and we'll go over
24 that as well. On this specific one, I didn't find that."

25 And he's referring to one of the early ACDVs where we

1 only had the Equifax copy. We did not have the Ocwen copy.
2 And the witness replied, "It's there." And clearly in the
3 context she was assuring us that we had already been
4 provided these.

5 And I provided the Court a chart, a color-coded chart
6 which shows that at some point in time starting in April of
7 2014 forward, we have not only the Equifax version of the
8 ACDV, we have the mirror image as the Ocwen version.

9 What I don't have are the Ocwen versions of the first
10 12 ACDVs. They exist. They have them. The Magistrate --
11 Ocwen has them. Maybe counsel doesn't. But I even asked
12 the Magistrate Judge to ask Mr. Lynch, Mr. Manning's
13 counterpart during that hearing, "Will you, will you ask Mr.
14 Lynch if he will produce these ACDVs?" to which Mr. Lynch
15 responded "Well, we gave them everything. We don't know if
16 Ocwen has them."

17 And if they don't have them by now, it's because
18 defense counsel made a strategic decision to remain ignorant
19 on whether they exist or not. They absolutely exist. If
20 they won't give them to us, we ought to be able to use the
21 reliable mirror images.

22 And that's why I want to offer the testimony of the
23 witness that authenticated the documents, the
24 cross-examination by Mr. Manning which demonstrates they
25 are, in fact, an Equifax ACDV to which Ocwen responded.

1 And then I want to offer the testimony of the 30(b)(6)
2 witness that actually uses the word "mirror images." And at
3 that point, I want to move for the admission of those
4 documents.

5 THE COURT: My understanding, or my
6 recollection -- I just want the record to be clear -- of
7 your asking the Magistrate Judge to make that inquiry of
8 counsel, was his answer not that he did not know whether
9 Ocwen could reproduce them at that point? Was that not his
10 word as opposed to having them?

11 MR. YOUNG: He, he -- my, my recollection, Your
12 Honor, is that he said, "We don't know if Ocwen has them or
13 not."

14 THE COURT: All right. Anything further?

15 MR. YOUNG: No, Your Honor. We just want to offer
16 the foundation so that we can move the admission of these
17 documents.

18 THE COURT: The initial objection, as I understood
19 it from Ocwen, was that the use of the documents had not
20 been disclosed to the defendant.

21 MR. YOUNG: Your Honor, we disclosed in the
22 pre-trial, integrated pre-trial order the documents were
23 provided over a year ago to both parties. We always had
24 them. Ocwen utilized those documents to cross-examine our
25 client. We used the documents to examine the 30(b)(6)

1 witness.

2 Moreover, under the -- under Rule 26, supplementing
3 discovery, we have a duty to supplement unless the
4 additional or corrective information has not otherwise been
5 made known to the parties during the discovery process.

6 It's been made known. It was in the pre-trial order.
7 Everyone's had them and used them freely throughout. And
8 what we have now, I believe, is an attempt by counsel for
9 Ocwen to essentially say, "Well, they didn't get them. They
10 didn't move to compel. So they're stuck and there's nothing
11 they can do about it."

12 But that ignores the fact that we have mirror images of
13 them. Their 30(b)(6) witness said they were mirror images,
14 and we ought to be able to use the mirror images if counsel
15 won't provide us with the same data printed out on the Ocwen
16 form which is printed out on the Equifax form which we
17 propose to use in lieu of using the Ocwen documents which
18 were never produced, even though their witness told us that
19 they had been.

20 THE COURT: Mr. Manning, any response?

21 MR. MANNING: Judge, we -- as Your Honor knows,
22 we've filed written briefs on this. I'll spare you those
23 and incorporate those by reference.

24 The points I wanted to emphasize is there's been a
25 number of statements by Mr. Young that I believe are

1 inaccurate and I just want the record to reflect that.

2 The record will show what was said at the hearing.

3 What was said at the hearing was Ocwen has produced all
4 available documents. Mr. Young's statements to the contrary
5 are nothing more than speculation.

6 The discussion at the deposition with the corporate
7 representative was only about one document. And the
8 representative that -- the March, 2014 -- I'm sorry --
9 March, 2013, ACDV from Equifax.

10 Again, contrary to what Mr. Young said, that was the
11 only document that was actually on, identified on the
12 26(a)(3)s. That's the only one. And I want this to be very
13 clear on the record.

14 I have the 26(a)(3) disclosures. I'm not sure if Your
15 Honor has them. I can hand them up if you'd like to see
16 them. They're not on there. And the rules are very clear
17 that you cannot use at trial anything that you don't
18 disclose timely under 26(a)(3).

19 That's why we have Rules of Civil Procedure. That's
20 why Your Honor enters orders setting deadlines for the
21 parties to ensure that they comply with. And your order,
22 ECF 12, goes all the way back to October, 2014. And in it
23 you state in Paragraph 2, "Please note that disclosures
24 after established deadlines to which an objection is made
25 will," underlined, all caps, bold, "be excluded from

1 evidence unless opposing counsel agree to the untimely
2 disclosure of the Court granting an extension to the
3 deadline."

4 There's no agreement here, Judge. We've lodged our
5 objections long ago in accordance with Your Honor's
6 scheduling order. There is no conceivable way that any of
7 this information can be admitted into evidence without it
8 being clear prejudice and harm. There's zero basis for it.

9 The other rule, 26(e)(1), puts the burden on the
10 plaintiff to supplement or amend their 26(a)(3)s. And it
11 says under (e)(1) that they have to -- I'm sorry. It says,
12 "A party who has a disclosure under 26(a) or who has
13 responded to an interrogatory request for production or
14 request for admission must supplement or correct its
15 disclosure or response in a timely manner."

16 Judge, this 26, Rule 26(a)(3) disclosure which was
17 dated back in September, 2015, was never amended.
18 Mr. Young's representation that it's in the pre-trial order,
19 I have that too and Your Honor can look it up. It's not in
20 there either.

21 This is a classic example of trying to shift blame to
22 somebody else. The representation at the hearing was all
23 available documents have been produced. Our representative
24 was asked about one document. And she believed if it was
25 available, it was in the production. That's all she was

1 saying. She's not making any categorical claim about having
2 produced everything.

3 The production was with the plaintiff. They have the
4 obligation to identify what there is and what there's
5 missing and follow the rules.

6 THE COURT: Was there an e-mail or a telephone
7 conversation that was quoted in one of the written
8 submissions in which there was a request made for the
9 documents that I believe the plaintiffs indicated there was
10 no response to? Am I remembering correctly or not?

11 MR. MANNING: I'm not sure, Judge, but I can tell
12 you that I believe I did talk with Mr. Nolan about it and
13 said, "We've produced everything available."

14 THE COURT: All right.

15 MR. YOUNG: May I respond to the Court's inquiry?

16 THE COURT: Yes, just my --

17 MR. YOUNG: We did attach as an exhibit an e-mail
18 from Mr. Nolan to Mr. Manning, and I can sort of paraphrase
19 it. It said, "We -- can you identify the Bates number of
20 the ACDV responses because we can't find them?" We had no
21 response.

22 Then I sent the letter which was also attached to an
23 exhibit to a previous motion or response to a motion we
24 filed wherein I specified -- I just sort of laid it out
25 chapter and verse that these -- we need the mirror images of

1 what we have. They weren't given to us. And I give the
2 specific discrete 16-digit control number for each of those
3 ACDVs.

4 And Ocwen produced them for April, '14 through August,
5 14'. They never produced them through March '14 -- or March
6 '13 through March '14. I laid it all out and said, "Here
7 they are," and then this battle has then ensued.

8 THE COURT: All right.

9 MR. YOUNG: In fairness, they should have been --

10 THE COURT: You've answered my question.

11 MR. YOUNG: I'm sorry.

12 Mr. Manning, go ahead. I apologize for the
13 interruption. Go ahead.

14 MR. MANNING: I don't have the submission. This
15 is what they filed over the weekend. But I do have the
16 actual brief. So Your Honor could look at the actual e-mail
17 or the brief at your convenience.

18 But I have the brief and it says -- the quote in the
19 brief is, "I wanted to see if you could confirm for us the
20 Bates location of the ACDV response form that corresponds to
21 the investigation performed on Bates 1665 at 1:40:46 a.m. by
22 Harish Rao. It does not appear to have been provided."

23 This is my point, Judge. They're not giving you the
24 accurate record. There is one request, one document that
25 was asked about during the deposition. The witness

1 understandably believed it was in the production. But it's
2 not because she understood, as we understand, Ocwen provided
3 everything. The follow-up was on one, that one document.

4 Mr. Young is not accurate in saying the request was for
5 all ACDVs and identify everything. It's irrelevant. But
6 the point is I just want to make sure the record is clear.
7 The request was on one.

8 Mr. Young -- Mr. Nolan and I had conversations about
9 not -- "we've given you what's available." I believe it's
10 true because I don't remember this e-mail. It's probably
11 true I didn't respond by e-mail. That doesn't mean we
12 didn't talk about it.

13 And the point is it's irrelevant. We've given what's
14 available. You have disclosure deadlines. You didn't
15 comply. It's clear prejudice. You can't have trial by
16 ambush, Judge.

17 THE COURT: And is it your position, Mr. Manning,
18 that Ocwen does not have those documents?

19 MR. MANNING: Yes, Judge. We've talked with our
20 client about it. They've provided the available documents
21 in their possession.

22 THE COURT: All right. You had the Rule 26
23 disclosure you wanted to hand up I believe.

24 MR. MANNING: Yes, Judge.

25 THE COURT: All right. Anything further, Mr.

1 Manning?

2 MR. MANNING: No, Judge.

3 THE COURT: Any rebuttal argument, Mr. Young?

4 MR. YOUNG: Just -- I want to point out the rule.

5 Mr. Manning cut it off when he read it.

6 The disclosure rule clearly provides, 26(e)(1)(a) that
7 the exception to disclosure is if counsel has been --
8 otherwise been made known to the other party during the
9 discovery process or in writing that they intended to use
10 them.

11 And I think we clearly fall within that. There is no
12 surprise. There is no ambush. And the only reason we're
13 trying to use the Equifax version is because the Ocwen
14 version which, at least to the first one, their witness said
15 exists has never been produced. So we want to use the
16 mirror image.

17 THE COURT: All right. This is an unusual
18 situation in terms of the arguments that I read that the two
19 of you have made, the arguments that you have made here in
20 open court. It is unusual because of the language in the
21 respective rules. It's unusual given the factual scenario.

22 And when I say the factual scenario, it being unusual,
23 there is an actual production by the defense in this case as
24 to a number of the ACDVs that correspond to the Equifax
25 documents. And then there are 12 -- for some reason, I was

1 thinking 14.

2 You have argued, Mr. Young, that there are 12 that you
3 have the Equifax corresponding document, but there was no
4 disclosure by the defendant of the Ocwen documents that
5 would correspond to those Equifax documents as there were
6 with the latter group of documents.

7 So it's an unusual situation in that I think it's clear
8 to everyone here that there would, in fact, be Ocwen
9 documents that correspond to those Equifax documents given
10 the way the process works and given the disclosure of the
11 latter documents.

12 With respect first to the Rule 26(a)(3) disclosure,
13 there is a disclosure here by the plaintiff that is only
14 general in nature that the plaintiff may use all documents
15 produced by plaintiff in discovery.

16 There is more general language, "Plaintiff may use
17 other discovery answers, pleadings, and all other documents
18 exchanged in discovery and any and all exhibits listed by
19 defendant if the need arises."

20 The Rule 26(a)(3) disclosure is not as specific, in my
21 opinion, as the rule calls for. However, again, I think
22 that this is an unusual situation in that when we talk about
23 surprise and we talk about fairness, as has been referenced
24 in the argument by Mr. Manning, it is clear to me from
25 looking at the actual disclosures that all parties know and

1 have known that the ACDVs from Ocwen that correspond to
2 those Equifax documents actually had to have existed or had
3 to have been a part of the process as it was on-going as it
4 involves Mr. Daugherty.

5 I find clearly on the record that the 26(a) rule
6 disclosure does not have the specificity that I want to see
7 and that I believe that the rule perhaps intended. However,
8 again, because I think this is an unusual situation where
9 everyone is aware that those particular documents had to
10 exist given what's shown in the latter disclosures, it is of
11 no surprise or prejudice to anyone that those documents are
12 missing or that they did, in fact, exist. They are not
13 unlike other documents except the time frame that's
14 involved.

15 Given the general nature of the 26(a) rule disclosure
16 and given the relatively small number of documents that the
17 parties have disclosed and exchanged in this case, I find
18 that there is no unfair surprise or prejudice with respect
19 to these particular documents.

20 Again, everyone had to know that those ACDVs existed
21 given the other facts that the parties have been aware of
22 and have deposed witnesses on. There is no unfair surprise
23 or prejudice to the use of these documents.

24 The other issue is we have documents here which is
25 unusual in any discovery case or issue that I have had to

1 rule on previously, documents from Equifax that are the
2 documents that would have been and should have been
3 disclosed by Ocwen.

4 Those, given the process, are the ACDVs, as I
5 understand it, that are electronically sent from Equifax to
6 Ocwen. Ocwen makes whatever statement or notation it makes
7 after its alleged investigation, and then the document is
8 returned to Equifax. So both parties have the same
9 documents.

10 So it's an unusual situation where a third party has
11 the exact documents which are missing from the production of
12 Ocwen to the plaintiff and which the plaintiff now desires
13 to use.

14 I again find -- I've reviewed the arguments in your
15 written submissions. I read the language of the 30(b)(6)
16 representative of Ocwen who indicated by virtue of the
17 testimony that those documents had been disclosed. They
18 apparently were not included in the production.

19 I don't venture here on the record to indicate why,
20 whether it was something intentional, whether it was not,
21 whether Ocwen had them, lost them, whether Ocwen has given
22 them to their counsel or whether they've not. I find no --
23 I have no factual basis to make any conclusions about that.

24 But given the process that has been described here,
25 it's clear that the document would have at some point -- and

1 I say "document" only if it's printed out. It was a
2 computer document that ultimately was sent to Equifax, would
3 have also been in the possession and available to Ocwen.

4 So, again, I find no unfair surprise, although this
5 situation with the documents is a lot messier than it should
6 be under the rules.

7 I find there's no unfair surprise nor prejudice to the
8 use of documents that were obtained from Equifax which were
9 at some point in the possession of Ocwen and which all
10 parties again had to know from the procedure, the process,
11 and the deposition of witnesses existed as counterparts to
12 those Equifax documents.

13 I also will note that it is represented, and I don't
14 believe that it's disputed based on my review, that these
15 very documents were used in deposition testimony. And it is
16 also my recollection that the deposition testimony that was
17 used as exhibits to the defendant's motion for summary
18 judgment included reference to some of the very same
19 documents.

20 And, so, again everyone's been on notice that these
21 documents were relevant to this case, were material to both
22 parties' position in the case, and it is of no surprise to
23 anyone that the documents existed. And even though the,
24 quote, disclosure, end of quote, of the Equifax documents
25 has come late, the nature of the documents, the knowledge of

1 the parties regarding the facts of this case, and everyone's
2 dependence on those documents to present both the
3 plaintiff's and the defendant's case tells me again that
4 there is no prejudice to any party in the use of those
5 documents.

6 There is also touched on here by the parties a hearsay
7 issue which I can rule on once I see what the defendant's --
8 or what the plaintiff's evidence is. But I find that they
9 should be allowed to use the documents which were at one
10 point in the possession of Ocwen which has not been produced
11 by Ocwen.

12 And I also want to note on the record when I consider,
13 Mr. Manning, the entirety of this factual situation, I do
14 not believe there's any prejudice to the defendant or
15 unfairness.

16 But, quite frankly, I think it would, in fact, be
17 unfair for Ocwen to have had these documents, not produced
18 them, and because they didn't produce the very same
19 documents that could be obtained elsewhere not be able to
20 use them. That I find would be very, very unfair to the
21 plaintiff given the whole scenario here.

22 And, again, it's a messy situation with documents that
23 the rules do not contemplate. If there is a late production
24 of something that's new, I agree wholeheartedly it should be
25 excluded and it is my practice to exclude it. Here, though,

1 you all have been working with the similar documents and had
2 to know that these existed given the factual scenario.

3 And, so, I'm going to permit their use, preserving the
4 defendant's objection and exception, and finding not only no
5 unfairness or surprise to the defendant, but finding that
6 there would be unfairness to the plaintiff for Ocwen not to
7 produce them and, therefore, as a result the defendant not
8 be able to use them even though they could obtain the same
9 exact document from a third source.

10 Anything further on that issue before we proceed with
11 the jury?

12 MR. YOUNG: No, thank you, Your Honor.

13 THE COURT: Do you all need a break before I call
14 them back in?

15 MR. MANNING: Judge, may I just make one comment?
16 I understand my objection is preserved, but for clarity
17 purposes, the unfairness isn't the lack of production. The
18 unfairness is the lack, the failure to identify that they
19 would be used at trial.

20 THE COURT: Well, I know that that's the
21 defendant's perspective. I do not -- and I think that I've
22 covered that. In the disclosure they -- I find there's a
23 disclosure that's general in nature. It is not specific as
24 the rules would require. But because you all have been
25 aware that these ACDVs were important and material to this

1 case, I find no, again, unfairness or surprise.

2 So even though this disclosure is not specific, given
3 the limited number of documents that are in use in this case
4 and given everybody's knowledge of how important these were,
5 I do not find any unfairness to the defendant nor any
6 prejudice.

7 Do you all need a break before I call the jury back?

8 MR. MANNING: One more comment, Judge. I
9 understand your ruling and I'm not going to belabor it.

10 The second -- the reference to the documents being the
11 same is inaccurate. If you do a side-by-side of Equifax to
12 the Ocwen, they're not the same. They contain different
13 information, different format. And to say that just because
14 Ocwen at one point had it and it's no longer available, that
15 that same document is in the possession, doing the
16 side-by-side comparison you can see on its face that that is
17 not true.

18 THE COURT: All right. And to the limited extent
19 that you state that, I think that you're right. But when we
20 talk about the substance of the use of the documents as they
21 relate to this trial, I do find them to be essentially the
22 same, Mr. Manning. And I'm done with the issue.

23 Do you all need a recess before I call the jury back?

24 MR. NOLAN: Yes, please, Your Honor.

25 THE COURT: All right. Let's get back here at 10

1 minutes till the hour.

2 MR. NOLAN: Thank you, Your Honor.

3 (Recess taken from 10:41 a.m. until 10:53 a.m.)

4 MR. YOUNG: Your Honor, may I approach the court
5 reporter? I wanted to make sure I gave her the proper
6 transcript.

7 THE COURT: Yes, sir.

8 (Jury returned into the courtroom at 10:55 a.m.)

9 THE COURT: You all be seated.

10 I apologize for the delay, ladies and gentlemen.

11 Mr. Young.

12 MR. YOUNG: Your Honor, plaintiff calls by
13 deposition Latonya Munson.

14 THE COURT: All right.

15 Ladies and gentlemen, you are about to hear testimony
16 from a deposition where a witness was placed under oath and
17 questioned prior to trial. And you are to give that
18 evidence the same consideration you would give it if the
19 witness appeared here and testified from the witness stand.

20 In this particular instance, one of the lawyers will
21 ask the questions and the other will give to you the answers
22 that the witness gave during the course of the deposition.

23 Let's go forward, please.

24 MR. YOUNG: May the Court note that the witness
25 was sworn by the stenographer at the deposition?

1 THE COURT: Yes, sir.

2 LATONYA MUNSON, PLAINTIFF'S WITNESS, CALLED BY
3 DEPOSITION AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. YOUNG:

6 Q. "Ms. Munson, this is Ralph Young, counsel for the
7 plaintiff, who is going to ask the questions at this time.

8 Did the witness state her full name for the court
9 reporter?"

10 And the court reporter asked, "Will you state your full
11 name, please?"

12 A. "Latonya Munson.

13 Q. Hello, Ms. Munson. Could you tell me or at least tell
14 the court reporter your business address?

15 A. I work out of 1100 Abernathy Road in Atlanta, Georgia.

16 Q. And by whom are you employed?

17 A. Equifax. I am employed by Equifax.

18 Q. And what is your job title or position?

19 A. My job title is Consumer Research Analyst.

20 Q. How long have you held that position?

21 A. I have held this position for 11 years.

22 Q. In the course of your employment in that capacity with
23 Equifax, have you been called upon to give deposition
24 testimony in the past?

25 A. Yes, I have.

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1 Q. Have you given testimony in that position on behalf of
2 Equifax as it pertains to authentication of Equifax business
3 records?

4 A. Yes, I have.

5 Q. Are you familiar with how Equifax compiles and
6 maintains records of credit histories of consumers?

7 A. Yes, I am.

8 Q. If a consumer disputes their credit history entry with
9 respect to its credit history, does Equifax have in place a
10 system to address such concerns?

11 A. Yes. Equifax has policies and procedures to handle
12 consumers' disputes when they come to question. Could you
13 rephrase it?"

14 MR. YOUNG: We're reading across, Mr. Broadwater.

15 MR. BROADWATER: Oh, okay.

16 A. "Yes. Equifax has policies and procedures to handle
17 consumers' disputes when they come to Equifax in regards to
18 information that is reporting on their Equifax credit file.

19 Q. And in your capacity as an employee of Equifax, do you
20 deal with such consumer disputes on behalf of Equifax on a
21 daily basis?

22 A. I don't necessarily deal directly with those disputes
23 on a daily basis. I would deal with disputes that are
24 involving current litigants with Equifax. To the extent
25 that we receive those on a daily, weekly, or monthly basis,

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1 then I would handle those disputes at that time.

2 Q. I want to ask -- I want to state specifically with
3 respect to this civil action where I represent Mr. Daugherty
4 and the defendant is Ocwen. Have you reviewed certain
5 Equifax records relating to disputes by or on behalf of
6 Mr. Daugherty which were transmitted to Ocwen?

7 A. Yes. I have reviewed disputes that were handled by
8 Equifax on behalf of Mr. Daugherty in regards to the Ocwen
9 account.

10 Q. When a dispute is received, such as a dispute from
11 Mr. Daugherty, is that dispute transmitted to Ocwen by
12 virtue of a particular form?

13 A. I'm not sure that I understand your question. Could
14 you rephrase it?

15 Q. Does Equifax use the Automated Consumer Dispute
16 Verification system?

17 A. Yes, Equifax does use the Automated Consumer Dispute
18 Verification database.

19 Q. And as I understand it, this is generally called the
20 e-OSCAR system?

21 A. Yes. That is my understanding as well.

22 Q. Now, specifically with respect to Mr. Daugherty's
23 account, you have before you Exhibits 1 through 15.

24 A. I am looking at the documents.

25 Q. Let's make it a little easier. Let's look at what has

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1 been marked as Equifax Records Deposition Exhibit 1.

2 A. Okay.

3 Q. Is Exhibit 1 an Automated Consumer Dispute Verification
4 form?

5 A. Yes. Exhibit 1 contains two Automated Consumer Dispute
6 Verification forms.

7 Q. And is this information transmitted in the normal
8 course of business to Ocwen?

9 A. Yes. These ACDVs were transmitted to Ocwen in the
10 normal course of business.

11 Q. Certainly. You have before you Exhibit 1 which is two
12 ACDVs. Do these paper copies actually get transmitted to
13 Ocwen or is it done by computer?

14 A. It is my understanding that these ACDVs were
15 transmitted through an electronic means and not by paper.

16 Q. Were the two ACDVs which compose Exhibit 1, or that
17 Number 1 consists of, were they transmitted electronically
18 to Ocwen?

19 A. Yes, they were.

20 Q. In the normal course of business, does Equifax receive
21 responses from creditors when Equifax sends an ACDV to that
22 creditor?

23 A. Yes. It is customary for Equifax to start the ACDV
24 process and to receive a response from a furnisher if they
25 respond to Equifax in a given amount of time for a

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1 re-investigation.

2 Q. And I want to again refer your attention to Deposition
3 Exhibit 1. Does Exhibit 1, the two ACDVs contained in that
4 exhibit, does that contain -- do they contain not only the
5 information electronically transmitted by Equifax to Ocwen
6 but do they also contain Ocwen's response back to Equifax?

7 A. Yes. Both ACDVs contain Equifax's notification of
8 dispute to Ocwen and Ocwen's response to the ACDVs.

9 Q. And the two ACDVs which consist of Exhibit 1, were they
10 created and maintained by Equifax in its normal course of
11 regularly conducted business activities?

12 A. Yes, they were.

13 Q. And are the two documents contained in Exhibit 1
14 records that would be routinely made and kept in the course
15 of business in the usual practice of Equifax business?

16 A. Yes.

17 Q. Were these records made at or near the time the actual
18 event that it reports?

19 A. Yes, they were.

20 Q. Was the report or the ACDV made by a person with
21 knowledge or from information transmitted by a person with
22 knowledge and reported such knowledge in the regular course
23 of business?

24 A. I don't understand the question.

25 Q. Were the two ACDVs contained in Exhibit 1, were they

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1 made by someone at Equifax with knowledge of the information
2 contained in those documents?

3 A. I don't know. I am sure if these were actually -- I
4 believe these were generated and processed by an agent or a
5 live person. So, therefore, yes, someone would have
6 reviewed the information to enter into the Automated
7 Consumer Dispute Verification forms."

8 MR. YOUNG: Mr. Broadwater, you misread the
9 beginning. Could you re-read that answer because you left
10 out the word "not."

11 A. "I don't know. I am not sure if these were actually --
12 I believe these were generated and processed by an agent or
13 a live person. So, therefore, yes, someone would have
14 reviewed the information to enter into the Automated
15 Consumer Dispute Verification forms.

16 Q. And the information contained in the two ACDVs which
17 are Exhibit 1, that would be based upon information compiled
18 and maintained in the normal course of business of Equifax.
19 Is that true?

20 A. Yes, that is true.

21 Q. What is the source of the information contained in the
22 ACDV as it is transmitted by Equifax to Ocwen, specifically
23 the two that are before the witness at present?

24 A. The source of the trade information would have come
25 from Ocwen Loan Servicing.

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1 Q. Would you please refer to Equifax Records Deposition
2 Exhibit 2?

3 A. I have the documents.

4 Q. Do the two ACDVs that compose Exhibit 2, do they
5 reflect recent information -- excuse me. Do they reflect
6 information transmitted electronically by Equifax to Ocwen?

7 A. Yes, they do.

8 Q. And were these documents created and maintained by
9 Equifax in the normal course of regularly conducted business
10 activity?

11 A. Yes.

12 Q. Are these records that are routinely -- excuse me. Are
13 these records that are routinely made and kept in the course
14 of business and in a business as usual practice?

15 A. Yes, they are.

16 Q. Were these records made at or near the time of the
17 event that it reports?

18 A. Yes.

19 Q. Let me refer you to Equifax Records Deposition Exhibit
20 3.

21 A. I have the documents.

22 Q. Is Exhibit 3 an Automated Consumer Dispute Verification
23 form that's transmitted electronically by Equifax to Ocwen?

24 A. Yes, it is.

25 Q. And I meant to ask you this question earlier, but with

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1 respect to the three exhibits that you've already looked at,
2 do each of these ACDVs have a discrete 17-digit control
3 number?

4 A. They actually have a 16-digit control number.

5 Q. Okay. Well, I confess I don't count well here. But
6 Exhibit 3, does that control number end in 4103?

7 A. Yes, it does.

8 Q. Exhibit 1 and Exhibit 2 each consisting of two separate
9 ACDVs, they each have their own 16-digit control number;
10 correct?

11 A. That is correct.

12 Q. Could you refer to Exhibit 4, please?

13 A. I have it.

14 Q. Is Exhibit 4 an Automated Consumer Dispute Verification
15 form transmitted electronically by Equifax to Ocwen?

16 A. Yes.

17 Q. Is this document an ACDV created and maintained by
18 Equifax in the normal course of regularly conducted business
19 activity?

20 A. Yes, it is.

21 Q. Is this record one that is routinely made and kept in
22 the course of business, the business as usual practice?

23 A. Yes.

24 Q. Was it made at or near the time of the event that it
25 records?

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1 A. Yes, it was.

2 Q. Ms. Munson, may I ask you to refer to Exhibit 5 at this
3 time?

4 A. I have the exhibit.

5 Q. Is Exhibit 5 two Automated Consumer Dispute
6 Verifications created and maintained by Equifax in its
7 normal course of regularly conducted business activity
8 transmitted by Equifax to Ocwen?

9 A. Yes, it is.

10 Q. I think the witness still has before her Exhibit 5; is
11 that correct?

12 A. Yes.

13 Q. And I believe you already confirmed that these are two
14 Automated Consumer Dispute Verifications sent by Equifax to
15 Ocwen; is that correct?

16 A. Yes, that is correct.

17 Q. And does one of the ACDV forms end with control number
18 5113?

19 A. Yes.

20 Q. Does the other end with control number 5114?

21 A. Yes, it does.

22 Q. Are these documents, ACDVs created and maintained by
23 Equifax in the normal course of regularly conducted business
24 activity?

25 A. Yes.

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1 Q. Are these records that are routinely made and kept in
2 the course of business and the business as usual practice?

3 A. Yes.

4 Q. Were these records made at or near the time of the
5 event that they record?

6 A. Yes, they were made at the time -- at or near the time
7 of the event.

8 Q. Could you please refer, Ms. Munson, to Exhibit 6.

9 A. I have the records.

10 Q. And does Exhibit 6 consist of two Automated Consumer
11 Dispute Verifications transmitted electronically by Equifax
12 to Ocwen?

13 A. Yes.

14 Q. Does one ACDV end with control number 0122?

15 A. Yes.

16 Q. Does the other end with control number 0123?

17 A. Yes, it does.

18 Q. Were these ACDVs created and maintained by Equifax in
19 the normal course of regularly conducted business
20 activities?

21 A. Yes, they were.

22 Q. Are these records that are routinely made and kept in
23 the course of business in the business as usual practice?

24 A. Yes.

25 Q. Was the record made at or near the time of the events

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1 it records?

2 A. Yes.

3 Q. Ms. Munson, could you please refer to Exhibit 7?

4 A. ACDVs? I have the records.

5 Q. Is Exhibit 7 two Automated Consumer Dispute
6 Verification forms electronically transmitted by Equifax to
7 Ocwen?

8 A. Yes, they are.

9 Q. Does one end in control number 1126 and the other end
10 in 1127?

11 A. That's correct.

12 Q. Were these ACDVs created and maintained by Equifax in
13 the normal course of regularly conducted business
14 activities?

15 A. Yes.

16 Q. Is this record one made in the routine course of
17 business and the business as usual practice?

18 A. Yes.

19 Q. Were these records made at or near the time of the
20 events they record?

21 A. Yes, they were.

22 Q. I'm getting better at this. Could you refer now,
23 Ms. Munson, to Exhibit 8?

24 A. I have the documents.

25 Q. Does Exhibit 8 consist of two Automated Consumer

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1 Dispute Verifications sent electronically by Equifax to
2 Ocwen, one bearing control number 8131 and the other bearing
3 control number ending in 8132?

4 A. Yes, that is correct.

5 Q. Were these ACDVs created and maintained by Equifax in
6 the normal course of regularly conducted business
7 activities?

8 A. Yes.

9 Q. Are these business -- are these ACDV records made and
10 kept in the course of business in the business as usual
11 practice?

12 A. Yes.

13 Q. And were these records made at or near the time of the
14 event that they record?

15 A. Yes, they were.

16 Q. Can you refer to Exhibit 9, Ms. Munson?

17 A. I have the document.

18 Q. Does Exhibit 9 consist of two Automated Consumer
19 Dispute Verifications transmitted electronically by Equifax
20 to Ocwen, one bearing control number ending in 5124 and the
21 other bearing control number ending in 5125?

22 A. Yes. These are both -- yes, these are those documents.

23 Q. And these ACDVs were created and maintained by Equifax
24 in the normal course of its regularly conducted business
25 activity; is that correct?

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1 A. That is correct.

2 Q. Are these records that are routinely made and kept in
3 the course of business in the business as usual practice?

4 A. Yes, they are.

5 Q. Are these -- and these records were made at or near the
6 time of the events that they recorded, weren't they?

7 A. Yes, they were.

8 Q. Ms. Munson, could you refer to Exhibit 10?

9 A. I have Exhibit 10.

10 Q. And does Exhibit 10 consist of two Automated Consumer
11 Dispute Verifications transmitted electronically by Equifax
12 to Ocwen, one bearing control number ending in 7122 and the
13 other bearing control number ending in 7123?

14 A. Yes.

15 Q. And these ACDVs were created and maintained by Equifax
16 in the normal course of its regularly conducted business
17 activity; is that correct?

18 A. Yes, it is.

19 Q. Are these records that are routinely made and kept in
20 the normal course of business in the business as usual
21 practice?

22 A. Yes.

23 Q. And were these records made at or near the time of the
24 events that they record?

25 A. Yes, they were.

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1 Q. Could you refer to Exhibit 11 at this time?

2 A. I have Exhibit 11.

3 Q. Now, Exhibit 11 is five pages. Take a moment and
4 peruse those for me, could you?

5 A. I have done so.

6 Q. With respect to Exhibit 11, when Equifax receives
7 correspondence from a consumer, does it routinely in the
8 normal course of business make photocopies or make a digital
9 record of that letter from a consumer?

10 A. Yes, Equifax does image the consumer's dispute letter.

11 Q. And Page 1 of Exhibit 11 is, in fact, a letter from
12 Mr. Daugherty which was received by Equifax?

13 A. Yes. The letter indicates that Mr. Daugherty sent this
14 information to Equifax.

15 Q. And the second page of Exhibit 11, does it also appear
16 to be a letter written by Mr. Daugherty that was imaged into
17 the records of Equifax?

18 A. I don't understand your question.

19 Q. On the second page of Exhibit 11, a letter, a copy of
20 which was received by Equifax?

21 A. Yes. The second page of this document was received by
22 Equifax.

23 Q. And was the third page of Exhibit 11 a document
24 received by Equifax?

25 A. Yes.

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1 Q. Is the fourth page of Exhibit 11 an envelope that was
2 received by Equifax?

3 A. Yes, it is.

4 Q. You have to help me here. But is the fifth page of
5 Exhibit 11 a copy of the reverse side of the envelope
6 previously mentioned?

7 A. Yes, that is correct.

8 Q. Ms. Munson, could you please refer to Deposition
9 Exhibit 12, please?

10 A. I have the document.

11 Q. Does Exhibit 12 consist of two Automated Consumer
12 Dispute Verifications electronically transmitted by Equifax
13 to Ocwen, one bearing a control number ending in 1128 and
14 the other bearing a control number ending in 1129?

15 A. Yes. The Exhibit 12 appears to include the ACDV for
16 control numbers ending in 1128 and then perhaps two copies
17 of the ACDV that ends in control number 1129.

18 Q. Thank you for pointing that out to me. We did produce
19 a second copy of 1129. Thank you. These ACDVs were created
20 and maintained by Equifax in the normal course of its
21 regularly conducted business activity, wasn't it?

22 A. Yes, they were.

23 Q. One moment, please. I'm back, Ms. Munson. I lost my
24 train of thought here. I may have asked this already. Let
25 me run through this one more time. Were the two ACDVs, one

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1 of which is duplicated twice contained in Exhibit 12, were
2 these ACDVs created and maintained by Equifax in its normal
3 course of regularly conducted business activities?

4 A. Yes, they were.

5 Q. Are these ACDVs routinely made and kept in the course
6 of business in the business as usual practice?

7 A. Yes.

8 Q. Were these records made at or near the time of the
9 events they record?

10 A. Yes.

11 Q. I apologize if I asked that once. Could you refer to
12 Exhibit 13?

13 A. I have Exhibit 13.

14 Q. I found my Exhibit 13. And does Exhibit 13,
15 Ms. Munson, does this consist of two Automated Consumer
16 Dispute Verification forms transmitted by Equifax to Ocwen?

17 A. Yes.

18 Q. And does one have a control number ending in 8128 and
19 the other control number ending in 8129?

20 A. Yes, that is correct.

21 Q. Were these ACDVs created and maintained by Equifax in
22 the normal course of regularly conducted business
23 activities?

24 A. Yes.

25 Q. Were these records routinely made and kept in the

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1 course of business of Equifax and in Equifax's usual
2 practice?

3 A. Yes.

4 Q. Were these records made by Equifax near or at the time
5 the events they record?

6 A. Yes, they are.

7 Q. Could you please refer, Ms. Munson, to Exhibit 14?

8 A. I have Exhibit 14.

9 Q. Does Exhibit 14 consist of two Automated Consumer
10 Dispute Verification forms transmitted by Equifax to Ocwen,
11 one bearing control number 88137 and the other bearing
12 control number ending in 88138?

13 A. Yes.

14 Q. Were these ACDVs created and maintained by Equifax in
15 the normal course of regularly conducted business activity?

16 A. Yes, they were.

17 Q. Were these records routinely made and kept by Equifax
18 in the course of its business and in Equifax's usual
19 practice?

20 A. Yes.

21 Q. Were these records made at or near the time of the
22 events they record?

23 A. Yes, they were.

24 Q. Could you refer to Exhibit 15?

25 A. I have Exhibit 15.

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1 Q. Ms. Munson, Exhibit 15 is a two-page document that was
2 produced by Equifax in this litigation. Could you tell me
3 what is in that document?

4 A. This is Equifax's re-investigation results of a dispute
5 of the West Asset Management account and other accounts that
6 were not reporting on Mr. Daugherty's credit file, and also
7 Litton Mortgage Service account.

8 Q. Does the Exhibit 15, a two-page document, does it
9 appear to be a document created and maintained by Equifax in
10 the normal course of its regularly conducted business
11 activity?

12 A. Yes, it is.

13 Q. Is this record one that is routinely made and kept in
14 the course of business in the business as usual practice?

15 A. Yes, it is.

16 Q. Was this record made at or near the time of the events
17 it records?

18 A. Yes, it was.

19 Q. I have no further questions of the witness. Thank you,
20 Ms. Munson."

21 THE COURT: Mr. Kenney.

22 MR. KENNEY: Mr. Broadwater, are you comfortable
23 continuing to play the role of Ms. Munson?

24 MR. BROADWATER: I am. Let's go.

25 MR. KENNEY: All right.

CROSS EXAMINATION

BY MR. MANNING:

Q. "This is Jason Manning. I'm the attorney representing the defendant, Ocwen Loan Servicing. Can you hear me okay?

A. Yes.

Q. What did you do to prepare for your deposition today?

A. Could you be more specific?

Q. Do you understand the question?

A. I was asking you if you could be more specific.

Q. Yeah. Preparation just means -- preparation just means what you do to prepare. I'm wondering what you did to prepare.

A. I reviewed these documents that were Exhibits 1 through 15 in regards to today's deposition.

Q. Thank you. Did you review any other documents?

A. Not that I recall.

Q. The sole source of information or knowledge you have about this case is the 15 documents that you reviewed that were provided to you by plaintiff's counsel; correct?

A. No, that's incorrect.

Q. What other knowledge do you have?

A. Well, I recall that I was a team member who actually printed out all of the documents that Equifax had in regards to this litigation. So I actually produced the documents on behalf of Equifax to Equifax's counsel.

1 Q. There were over a thousand pages of documents produced
2 by Equifax in this case; correct?

3 A. I don't recall.

4 Q. You recall it being more than the 15 exhibits that you
5 reviewed in preparation for today; right?

6 A. Yes, that's correct.

7 Q. Did you conduct any investigation into any of the
8 documents that you prepared for your attorneys in this case?
9 You mentioned that you undertook to identify and produce any
10 documents that were relevant to this case; right?

11 A. Yes, I did.

12 Q. And those documents are documents that you yourself
13 identified and produced to your attorneys; right?

14 A. Yes. I would have been the person who provided
15 documents to Equifax's counsel.

16 Q. Other than identifying these documents, did you
17 undertake any investigation into the meaning of those
18 documents?

19 A. I'm not sure that I understand your question.

20 Q. I understand that you identified and printed out
21 documents. I'm wondering if you did anything other than
22 identify documents pertaining to Mr. Daugherty and print
23 them out.

24 A. I don't recall.

25 Q. Do you recall reviewing any of the documents that you

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1 provided to your attorneys?

2 A. As I sit here today, I don't recall reviewing any of
3 the documents outside what we reviewed today.

4 Q. Did you yourself undertake any investigation into this
5 dispute that is the subject of this litigation?

6 A. I don't recall.

7 Q. You said you were a consumer -- you said that you were
8 a Consumer Research Analyst for Equifax; right?

9 A. Yes, I am.

10 Q. Part of your job is to investigate litigated disputes;
11 right?

12 A. Yes. Part of my job is to conduct every investigation
13 of a consumer's concern when they are in litigation with
14 Equifax and they have contacted Equifax to dispute
15 information on their credit file pending a lawsuit.

16 Q. Did you conduct any re-investigation of this matter?

17 A. I don't recall.

18 Q. As you sit here today, you have no knowledge of whether
19 you did or did not?

20 A. No. I don't recall whether or not I started any
21 disputes in regards to this consumer. I believe it has been
22 a few years. This is an on-going matter. I do not recall.

23 Q. Equifax was a party in this case as a defendant; right?

24 A. That is my understanding.

25 Q. So you showed up here today to testify about documents

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1 that plaintiff's counsel gave you without the benefit of
2 having reviewed the entire production that Equifax provided
3 in this case as a defendant; correct?

4 A. I don't know whether I have seen all of the documents
5 or not.

6 Q. You don't know what other documents Equifax may have
7 regarding this dispute because you only reviewed the 15 that
8 plaintiffs provided to you; correct?

9 A. Could you rephrase your question?

10 Q. You've only seen the 15 documents that you recall
11 testifying about. And as a result, you don't know what
12 other documents Equifax has produced in this case as a
13 defendant; right?

14 A. No. I mentioned earlier that I was the person that
15 provided Equifax's outside counsel with certain documents as
16 it relates to Mr. Daugherty's dispute with Equifax. So I
17 have had those documents in my possession at some point.

18 However, I am not sure whether or not those are all the
19 documents that I -- I am not sure whether or not those are
20 all the documents as I sit here today that were produced.

21 Q. Ms. Munson, you've talked about how you are here
22 pursuant to a notice of deposition; right?

23 A. Yes, that is correct, my understanding.

24 Q. Sure. I understand your role as a Consumer Research
25 Analyst, at least as it is here today, is you didn't

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1 actually generate any of the documents that are identified
2 as Exhibits 1 through 15 by the plaintiffs in this
3 deposition; correct?

4 A. Could you be more specific? When you say "generate the
5 documents" what do you mean by that?

6 Q. Yes, I can clarify. As a Consumer Research Analyst,
7 you don't yourself handle the disputes when they come in
8 from the consumer; correct?

9 A. I do not handle disputes that come in from a consumer
10 on a general basis if they are not already involved with
11 litigation with Equifax.

12 Q. So all of the documents, Exhibits 1 through 15, are
13 generated prior to this case being in litigation; correct?

14 A. I don't recall whether or not all the documents were
15 prior to litigation. I do see where there is an indication
16 that I assisted with the re-investigation as it relates to
17 Exhibit 15.

18 Q. You yourself didn't handle any of Mr. Daugherty's
19 third-party Aggressive Credit Repair letters to Equifax;
20 correct?

21 A. I do not recall whether or not I handled any of those
22 disputes. If they were received post-notification of the
23 lawsuit or around the time of notification of the lawsuit if
24 they were --

25 Q. As you sit -- I'm sorry.

1 A. If they were received during or pending the litigation,
2 I may have had some involvement with the dispute process.

3 Q. As you sit here today, you're not able to identify any
4 of the 15 exhibits from plaintiffs in this deposition that
5 you yourself actually prepared; correct?

6 A. That is incorrect. The only one that I can see and
7 determine that I have had some type of involvement in is in
8 regards to Exhibit 15.

9 Q. Let's talk about that one for a minute. The only one
10 you would have personal knowledge of is Exhibit 15; correct?

11 A. At this time, that is the only one I, upon reviewing
12 the documents at face value, that I can recall or have some
13 indication that I have had some type of involvement in the
14 dispute. And that would be in regards to Exhibit 15 only at
15 this time.

16 Q. Great. Do you have Exhibit 15 in front of you?

17 A. Yes, I do.

18 Q. Thank you. How do you know you prepared this document?

19 A. Upon looking at the document, I can see where my
20 Equifax log-in is printed on the document.

21 Q. Could you identify that for me?

22 A. Yes, I can.

23 Q. Where is it?

24 A. It is on Page EIS 412 and 413 where there is an X86
25 printed on the document.

1 Q. I see. I think I see it. Is it on the bottom
2 right-hand corner where there is a footer? It is to the
3 right of the page numbers?

4 A. That is correct.

5 Q. And, so, the number there is somewhat long. That
6 identifies you as an employee of Equifax as the creator of
7 this document?

8 A. No. That just means that there is a confirmation
9 number there. And then the X86 means that I completed
10 the -- handled the completed re-investigation to some
11 extent.

12 Q. Is that the -- X86 is that your number?

13 A. Yes, it is.

14 Q. What about the number prior to the X86? Does that
15 identify you?

16 A. No, it does not.

17 Q. What does that number mean?

18 A. That is the confirmation number that is associated with
19 this re-investigation.

20 Q. I see. This is also -- that's also in the upper
21 left-hand corner?

22 A. Yes.

23 Q. What about the document after -- after the X86 there's
24 a dash followed by another number. What is that number?

25 A. I don't know what that stands for.

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1 Q. You mentioned that you were the person who identified
2 and collected relevant documents in this case. Is there
3 anyone other than you who would have more knowledge at
4 Equifax about this dispute?

5 A. I don't know.

6 Q. If we stay on Exhibit 15, I want to make sure I
7 understand what the document is saying. If you look about
8 the middle of the first page it says, "We have reviewed your
9 concerns and our conclusions are." Do you see that?

10 A. Yes, I do.

11 Q. It says, "Please be advised the following accounts are
12 not reporting on your Equifax credit file." And then there
13 is a list of accounts. Right?

14 A. Yes.

15 Q. What does that mean?

16 A. The document indicates, "Please be advised that the
17 following accounts are not reporting on your Equifax credit
18 file: Verizon account number, starts with 3829; West Assets
19 1278, 1146, 1756; Ocwen 709224; credit col 72 -- excuse
20 me -- 27022; NCO 8034; Frontier 3042; Green Tree 8828;
21 Fidelity 308; First Federal 1323, 1238; Ocwen 709224; tax
22 lien 1641; and West Assets 1797, 1669.

23 Q. I see you just read off what is written there. I'm
24 asking you since you created the document, what does that
25 mean?

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1 A. Well, as it states, it states that, "Please be advised
2 the following accounts are not reporting on your Equifax
3 credit file," and lists those accounts.

4 Q. So when it says "not reporting on your Equifax credit
5 file," what does that mean?

6 A. Perhaps I don't understand your question.

7 Q. Well, it says, "Some accounts are not reporting on your
8 Equifax credit file." For someone who doesn't do this work
9 every day, how do you explain that? What does that mean?

10 A. This means that Equifax was responding to a
11 re-investigation of those accounts. And we advised upon
12 completion of the re-investigation that these accounts were
13 not reporting on the Equifax credit file and listed a few
14 accounts.

15 Q. So at least as of September 23rd, 2014, Equifax made a
16 determination that it would no longer report anything on
17 Mr. Daugherty's credit file pertaining to those accounts
18 that are listed there; correct?

19 A. This document indicates that Equifax advised
20 Mr. Daugherty that this information in regards to the
21 accounts listed were not reporting on his credit file at the
22 time of this re-investigation.

23 Q. Up until September 23rd, 2014, when you created this
24 document, all those accounts were being reported by Equifax;
25 correct?

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1 A. I don't know whether they were reporting or not. This
2 indicates they were not reporting at that time.

3 Q. Do you know when Equifax stopped reporting those
4 accounts?

5 A. No, I do not.

6 Q. Do you know why Equifax stopped reporting those
7 accounts?

8 A. No, I do not.

9 Q. Do you know what the process is for Equifax internally
10 to make the decision to stop reporting on accounts?

11 A. I think that's a very broad question. It depends on
12 the circumstances. Could you be more specific and provide
13 me with an example of what type of concerns you are speaking
14 of?

15 Q. Yes, I'd be happy to do so. If we look at the document
16 in front of you, it lists Ocwen twice. Do you see that it
17 has the same account listed two times there?

18 A. Yes, I do.

19 Q. And, so, up until this point, Equifax was reporting the
20 same single Ocwen account twice on Mr. Daugherty's credit
21 report; correct?

22 A. I don't know as we sit here and look at this one
23 document whether or not we were reporting that information
24 up until this point or not. I don't know.

25 Q. Are you aware of any other document that indicates

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1 Equifax stopped reporting the same account twice prior to
2 this document?

3 A. Could you rephrase your question?

4 Q. Yes. Are you aware of any other documents other than
5 this one dated September 23rd, 2014, in which Equifax stated
6 that it would stop reporting the Ocwen accounts that it was
7 reporting?

8 A. I don't know because I don't have any documents in
9 front of me to review. And I don't know that this -- this
10 document states that this information was not reporting on
11 the file and not that it would no longer be reporting on the
12 file.

13 Q. There's testimony in this case by other witnesses that
14 September, 2014, is when Equifax stopped reporting anything
15 about Mr. Daugherty's Ocwen account. And what I'm asking
16 you is are you aware of any other documents other than this
17 one that would reflect that?

18 A. I don't know.

19 Q. You see, Ms. Munson, where there is two Ocwen accounts
20 listed there that are the same?

21 A. I see that the document -- this document indicates that
22 Ocwen 709224 and Ocwen 709224 were not reporting on this
23 credit file.

24 Q. And they have the same account number listed; right?

25 A. Yes, they do have the same digits reporting on all

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1 these re-investigation results. However, I am not aware of
2 whether or not this is the full account number for the Ocwen
3 accounts.

4 Q. You've anticipated my next question. That is actually
5 an incorrect account number; right? If we look at the other
6 ACDVs, the account number has additional digits which are
7 missing. 537 should be at the end of that account number;
8 correct?

9 A. I don't recall what the additional numbers were. I
10 don't know.

11 Q. You would agree that Exhibit 14 and the other ACDVs
12 list a longer account number than Exhibit 15 which is
13 missing three digits; correct?

14 A. Yes, I do see where -- I do see where the ACDVs in
15 Exhibit 14 in regards to the account number or account
16 numbers are longer than the account numbers that are listed
17 on Exhibit 15 in regard to the Ocwen accounts.

18 Q. So one of those numbers is wrong. You just don't know
19 which one. Correct?

20 A. One of them perhaps is incomplete and wrong if you have
21 more information than I do.

22 Q. You would agree that it's important to have the correct
23 account number listed. And although you don't know which
24 one of these is correct, one of them is wrong; right?

25 A. I am not sure whether I agree with that or not. I

1 don't know.

2 Q. I'm sorry? You don't know the account number is
3 important?

4 A. No, I don't.

5 Q. Ms. Munson, my question to you is the account number is
6 different. You prepared Exhibit 15. You did not prepare
7 Exhibit 14. Correct?

8 A. No. I mentioned that I can tell by my log-in I had
9 something to do with the re-investigation of this particular
10 confirmation number. As I sit here today, I don't know to
11 what extent I did anything, that I handled the
12 re-investigation. But based upon my log-in here, I can
13 determine that I did have some involvement. I do not recall
14 what that involvement specifically was.

15 Q. So is it fair to say that the sole basis for you saying
16 that this series of documents, Exhibits 1 through 15, was
17 created and prepared in the ordinary course of business is
18 the fact that Equifax produced them?

19 A. I don't understand your question.

20 Q. We've already established that you don't have personal
21 knowledge of Exhibits 1 through 14; correct?

22 A. Not that I am aware of.

23 Q. So you don't know how these documents were prepared, 1
24 through 14, who prepared them or what they mean; correct?

25 A. No. I mentioned that I was the person that produced

1 the documents as it relates to Equifax's relationship with
2 the outside counsel and provided the information to them. I
3 do have knowledge as to what the documents mean to some
4 extent that I have been prepared to review them.

5 However, I am indicating that as far as Exhibit 15, I
6 just can determine that my log-in is on these documents and
7 so that I did have some personal knowledge in how this
8 re-investigation was completed and handled at some point. I
9 don't specifically know what my involvement was as we sit
10 here today.

11 Q. And as a result, you don't have any personal knowledge
12 about how they were created or maintained, Exhibits 1
13 through 14; correct?

14 A. No, that is incorrect. I do know how Equifax maintains
15 and creates its documents. And, so, I do know how these
16 documents in Exhibits 1 through 14 were maintained and
17 handled in Equifax's regular course of business.

18 Q. So in creating and maintaining documents, how would it
19 occur that Equifax is getting the account number wrong on
20 its documents?

21 A. Again, as the document indicates, it indicates that
22 Ocwen account number 709224, Ocwen 709224 may have been
23 taken from documents that were provided in the dispute
24 history or dispute process. But I don't know any more of
25 that as I sit here today in reviewing Exhibit 15.

1 Q. Thank you. I'll move on then. Let's look at Exhibit
2 15 at the second page. You will see this as Bates stamp
3 413.

4 A. I have this document.

5 Q. And here it has, at the top it says Litton Mortgage
6 Services Center; is that right?

7 A. Yes.

8 Q. It has an account number. Do you see that account
9 number?

10 A. Yes, I do.

11 Q. That account number doesn't match the account number on
12 the prior page; right?

13 A. Could you be more specific with your question?

14 Q. Sure. So in the document that you prepared, Exhibit
15 15, on the second page it says account number 1290 asterisk.
16 On the first page it says Ocwen 709224. Right?

17 A. Yes. The second page indicates that there was a Litton
18 Mortgage Loan Servicing account that began with 1290 that
19 was re-investigated. On the first page there was or there
20 were two Ocwen accounts that began with account number
21 709224 that were not on the file.

22 Q. So on the second page, you're identifying a Litton
23 account with a different account number. And that account
24 is not listed on the first page. Right?

25 A. That's correct.

1 Q. So as you sit here today, do you know whether Equifax
2 continued to report the Litton account that is listed on the
3 second page?

4 A. I don't recall. I don't know.

5 Q. Do you know whether it is the same account as one of
6 those two Ocwen accounts that Equifax was reporting on?

7 A. Well, they have different account numbers and different
8 names. So that would lead me to determine that they are two
9 different accounts.

10 Q. And by virtue of the fact that the first page doesn't
11 say we're not reporting on the Litton account, doesn't that
12 indicate that Equifax continued to report on the Litton
13 account?

14 A. Yes. The document indicates that Litton Mortgage
15 Services Center account number 1290 was reporting on the
16 credit file upon completion of this re-investigation
17 September 23rd, 2014.

18 Q. So just to make sure I understand that, at least as of
19 the date of Exhibit 15, Equifax was still reporting on the
20 Litton account; correct?

21 A. The Litton Mortgage Service account Number 1290 was
22 reported on the Equifax credit file as of September 23rd of
23 2014 based upon these documents that I am reviewing as EIS
24 412 and 413.

25 Q. If you look on the second page next to the account

1 number, it has a date open. Do you see that?

2 A. Yes, I do.

3 Q. And the date open is listed as August 17th, 1999;
4 right?

5 A. Yes.

6 Q. Do you know whether that is accurate?

7 A. No, I do not.

8 Q. Do you know if Mr. Daugherty had a separate account
9 with Litton that needed to be reported in addition to its
10 Ocwen account?

11 A. I don't know whether or not Mr. Daugherty does or does
12 not have at least one or more Litton mortgage accounts.
13 However, the information he is reporting on his credit file,
14 and I'm not sure what the nature of the dispute was in
15 regards to the Litton mortgage loan and why we
16 re-investigated it at this time.

17 Q. If you look at Exhibit 14, it is one of the ACDVs we
18 had talked about previously, you'll see on the first page
19 EIS 387 also has a high credit field similar to the second
20 page of Exhibit 15. Exhibit 15 says high credit \$100,813.
21 And Exhibit 14 has high credit \$100,860. Do you see that?

22 A. Yes, I do see where the ACDVs have -- one of them was a
23 high credit of 100,860 and the second was 100,813.

24 Q. Do you know whether Mr. Daugherty, in fact, had two
25 loans on the amount of 100,000 and change or if there was

1 just one?

2 A. No, I don't.

3 Q. Do you recall answering Mr. Young's questions about two
4 ACDVs behind each of the relevant exhibit tabs?

5 A. Yes.

6 Q. You identified that one of those exhibits actually had
7 a duplicate. It was not a separate ACDV. Do you recall
8 that?

9 A. Yes, I do.

10 Q. What exhibit number was that?

11 A. I don't recall the exhibit number.

12 Q. Let's just focus on 14 then. So at least as to 14, you
13 would agree that there are two different ACDVs; correct?

14 A. Yes.

15 Q. And you are identifying them as different ACDVs by the
16 control number; correct?

17 A. That is one of the indications, correct.

18 Q. You talked about the process by which Equifax receives
19 disputes. And we actually talked about one of the letters
20 that plaintiffs provided you. Right?

21 A. I don't recall talking about the dispute process.

22 Q. So we're -- we are talking about two ACDVs being
23 provided behind each of the exhibits that you have been
24 asked about. I want to turn specifically to Exhibit 1.

25 Ms. Munson, do you have Exhibit 1 in front of you?

1 A. I have it now.

2 Q. So earlier in this deposition you talked about the
3 process by which a consumer disputes credit history and then
4 Equifax has a system to address those concerns; right?

5 A. That is one of the means in which Equifax can receive a
6 dispute and start a re-investigation on the consumer's
7 behalf. That is correct. That is one example."

8 MR. KENNEY: So I think we're at Page 64, seven.

9 A. "Yes. I testified that Equifax uses an electronic
10 means to process ACDVs or consumer dispute verifications.

11 Q. So when the dispute comes in, there's a credit analyst
12 at Equifax who receives the data, interprets it, and codes
13 it as listed on Exhibit 1; right?

14 A. That is one of the means in which Equifax can receive a
15 dispute and start a re-investigation on a consumer's behalf.
16 That is correct. That is one example.

17 Q. And the disputes on Exhibit 1, there are codes 001 not
18 his/hers with instructions to provide the complete ID;
19 right?

20 A. Yes. That is the dispute code that was used in this
21 particular dispute.

22 Q. Second, there is a second dispute code 007, disputes
23 current/previous account status, payment history profile,
24 payment rating. Then there are instructions to verify
25 payment history profile, account status, and payment rating;

1 correct?

2 A. Yes.

3 Q. There are no other disputes listed; correct?

4 A. Well, there are no other dispute codes listed on either
5 of the ACDVs. The ACDV process can only utilize two dispute
6 codes.

7 Q. And there's actually a box right below that called FCRA
8 relevant information; right?

9 A. Yes, there is.

10 Q. And that box allows Equifax additional room to provide
11 any other relevant information regarding the disputes;
12 right?

13 A. Yes. The relevant information field can contain
14 additional information that may have been provided by the
15 consumer during the dispute process.

16 Q. None of these exhibits that plaintiffs provided you in
17 the FCRA relevant information box listed duplicate
18 tradelines; correct?

19 A. These two particular ACDVs in front of me don't list
20 that type of information in the FCRA relevant information
21 field, and I don't recall that the FCRA relevant information
22 fields indicated any information regarding a duplicate
23 account.

24 Q. Yeah. And we've got all the exhibits. You can look
25 through them if you'd like to confirm that. But I can tell

1 you -- I can represent on the record that there is never a
2 mention of a duplicative tradeline by Equifax. Are you
3 aware of any information to the contrary?

4 A. No. I just made mention that I was reviewing these two
5 in front of me at this time and that these two do not
6 indicate that there was a duplicate dispute or -- excuse
7 me -- a dispute that there was a duplicate Ocwen account. I
8 don't recall that any of the other ACDVs mentioned that FCRA
9 relevant information.

10 Q. But, in fact, Equifax was reporting the same Ocwen
11 account twice. The ACDV showed that; right?

12 A. I don't know if these are duplicate accounts. The
13 ACDVs indicate that there are certain information that is --
14 like including the account number. However, there is other
15 information that is different, and that being the date open
16 and some of the numeric values on the ACDVs are different as
17 well. So I don't know whether or not these are duplicate
18 accounts or not.

19 Q. So even as you sit here today, Equifax doesn't know
20 whether it was reporting a duplicate tradeline for
21 Mr. Daugherty's Ocwen account; correct?

22 A. Yes. I do not know whether or not these were duplicate
23 accounts as I am sitting here today in regards to the
24 information that is reported on the file, was reporting on
25 the file rather.

1 Q. We can agree that the account number that is listed for
2 Mr. Daugherty's Ocwen account is the same on each of the
3 ACDVs that you've identified in plaintiff's exhibits in this
4 case in this deposition; right?

5 A. Yes, that is correct. They do have the same account
6 number.

7 Q. Doesn't that indicate to Equifax that it was reporting
8 the same account twice?

9 A. This indicates to Equifax that Ocwen had provided
10 information in regards to two items having the same account
11 number, different open, high credit amounts, different
12 balance information, different payment history, and
13 different status. However, they were reporting the same
14 account number.

15 Q. But you don't know what Ocwen actually furnished on a
16 monthly basis because you haven't reviewed any of those
17 documents; right?

18 A. No, I have not reviewed any information that Ocwen
19 might have reported on a monthly basis.

20 Q. So as you sit here today, you can't say that Ocwen was
21 reporting or furnishing data for two accounts or duplicating
22 the accounts; right?

23 A. I don't know.

24 Q. What you do know is that Equifax was aware that it was
25 sending ACDVs with the same account because it was reporting

1 the same account twice; right?

2 A. From my recollection, I recall that the consumer
3 disputed two different Ocwen accounts that had the same
4 account number. Therefore, Equifax re-investigated those
5 accounts based upon receipt of the consumer's dispute
6 letters that indicate that he had a concern with two
7 different Ocwen accounts reporting the same account number
8 and, in some cases, disputed the information in just
9 different ways if I recall correctly.

10 Q. Do you know or are you guessing?

11 A. I am speaking to the best of my recollection.

12 Q. So you're not sure?

13 A. No. I am speaking to the best of my recollection that
14 the consumer disputed the Ocwen account on more than one
15 time or one occasion and that that account number was
16 disputed twice within their dispute letter.

17 Q. Maybe this will help refresh your memory. If you go
18 back to Exhibit 15 that you prepared, it references the
19 Litton account. On that account it says the date of last
20 activity was October, 2011, and it was closed November,
21 2011. Do you see that?

22 A. No. Just bear with me a moment while I gather that
23 document. Could you repeat your question?

24 Q. Let's read it back."

25 The record was read by the reporter.

1 A. "Yes, I do see the document indicates that the Litton
2 Mortgage Service Center account number 1290 DLA was 10 of
3 2011 and the date closed was 11 of 2011.

4 Q. So you don't know if that's accurate or not; right?

5 A. No, I don't know whether or not that information is
6 accurate or not. And I don't recall the nature of the
7 dispute in regards to that item and whether it was disputed
8 as inaccurate or not.

9 Q. So let's just make sure we're talking about the same
10 terminology. You used the word "furnisher." That's what
11 Ocwen is in relation to its role to Equifax. It furnishes
12 on a monthly basis information about the account that it has
13 with Mr. Daugherty; correct?

14 A. Ocwen is a data furnisher as I understand. They are a
15 member of Equifax's credit reporting system. So they
16 furnish information to Equifax. I don't know whether or not
17 Ocwen reports on a monthly basis or 30-, 60-, or 90-day
18 basis or not.

19 Q. Then when it receives the data from Ocwen, it is in the
20 form of electronic data that Equifax has to load into its
21 system; right?

22 A. Yes.

23 Q. Right. When Ocwen furnishes data, Equifax receives it
24 and there's a group of people at Equifax that are
25 responsible for loading that information to ensure that it

1 is accurately loaded into Equifax's system?

2 A. Yes. It is my understanding that Equifax does receive
3 information from data furnishers electronically and that
4 information is uploaded into our database. It goes through
5 a quality process.

6 Q. Are there written policies and procedures and training
7 manuals regarding this process?

8 A. I don't know.

9 Q. Do you know whether you identified and produced them in
10 this case?

11 A. No, I don't recall producing any of those manuals
12 because I don't know whether or not they exist.

13 Q. So let's go back to Exhibit 1 where we have the ACDVs.
14 You have identified that there are two disputes listed on
15 those. They each have the same account number and the same
16 borrower; right?

17 A. Yes, they do show that they have the same account
18 number and the same consumer ID information.

19 Q. And you haven't reviewed the data that Ocwen furnished
20 in order to determine whether these ACDVs accurately reflect
21 the information Ocwen was providing, have you?

22 A. No, I have not.

23 Q. So you don't know if they're accurate or not?

24 A. Well, I mean, as it relates to these ACDVs, these are
25 the ACDVs where the consumer contacted Equifax and had a

1 concern with the information that was being reported on the
2 credit files. So, therefore, Equifax started a
3 re-investigation of the concerns and contacted Ocwen to
4 determine whether or not the information was being reported
5 accurately on our credit file.

6 Q. Right. And, so, the way Equifax prepares -- this is
7 the process I'm trying to understand. The way Equifax
8 prepares Exhibit 1, these two ACDVs, is by going into
9 Equifax's system and pulling the information about the
10 tradelines it is reporting; right?

11 A. Yes. Equifax will review the information as far as a
12 dispute a consumer has and start a re-investigation of the
13 item if we are unable to make some type of update to the
14 file based upon its own policies and procedures.

15 And then we would start an ACDV and send that
16 information electronically to the furnisher, in this case
17 Ocwen, and ask Ocwen to review the consumer's concern and
18 start the re-investigation of the concerns as well.

19 Q. And someone at Equifax has to assign dispute codes in
20 order to notify the furnisher what needs to be investigated;
21 right?

22 A. In this particular situation, if I recall correctly,
23 all of the disputes were disputes that we received by mail.
24 Therefore, in those instances where Equifax would have an
25 agent review the consumer's dispute letter, that agent would

1 determine what their dispute was and create a dispute code
2 to transmit during the ACDV process.

3 And that would be based upon the information received
4 on the consumer's disputes. And in some cases where Equifax
5 is able, was able to transmit a copy of the consumer's
6 dispute letter to Ocwen, we did so as well.

7 Q. So someone at Equifax interprets the letter that you
8 have referred to, determines what the dispute is, and then
9 assigns a dispute code; correct?

10 A. That is correct. When the dispute is received by mail
11 from a consumer, that is how the process is initiated and is
12 part of the process.

13 Q. And none of these ACDVs identified a duplicative
14 tradeline; correct?

15 A. I don't understand your question.

16 Q. Well, we've been talking about this for some length. I
17 want to make sure we're on the same page. There is an
18 account number on these ACDVs, Exhibit 1, which is the same
19 which you said indicates that Equifax is reporting that
20 account twice; right?

21 A. Yes. Equifax was reporting the account twice, and the
22 consumer disputed both accounts as he listed it. If I
23 recall correctly, within his dispute letter he disputed the
24 item twice. So we sent out an ACDV for each item that was
25 reported on in the file that had the Ocwen account number.

1 Q. Okay. Whether it is on a monthly basis or some other
2 basis, Ocwen furnishes data and the record reflects that
3 Ocwen only furnished data on one account. Are you aware of
4 that?

5 A. No, I don't know.

6 Q. So let me ask you a different question. Equifax is the
7 one that controls what it puts into its credit report for a
8 particular consumer; right?

9 A. Equifax compiles data that it receives from furnishers
10 of information as it relates to customers, consumers and
11 then compiles a consumer credit report for many consumers.

12 Q. And Ocwen doesn't have direct access to Equifax's
13 internal database; right?

14 A. That's correct.

15 Q. Ocwen can't look at any particular consumer's credit
16 report just by asking Equifax; right?

17 A. No. I mean, Ocwen can request a copy of a consumer's
18 credit report and review that information if they have a
19 legitimate business purpose with the consumer.

20 Q. Ocwen doesn't control the generation, creation of a
21 credit report for a consumer; right?

22 A. If Ocwen is a business customer of Equifax and they
23 also do business with a consumer and they report information
24 to Equifax about the same consumer, then they are reporting
25 information and are the furnisher of information, credit

1 data that could be compiled with the consumer credit report.

2 Q. I understand. Maybe we're quibbling over terminology.

3 I won't use the word "control." I understand Ocwen

4 furnishes data. Equifax is the one responsible for

5 compiling and accurately reporting it; right?

6 A. Equifax is a national credit reporting agency. And as

7 part of being a national credit reporting agency, we

8 contract with businesses or furnishers of information that

9 certify that their information is accurate when they're
10 reporting it to Equifax.

11 Therefore, if there is information that is incorrect
12 during the dispute process, that is the opportunity for
13 Equifax either to follow its policies and procedures and
14 make changes to a credit report or contact the source of
15 that information.

16 As it relates to Mr. Daugherty, we sent ACDVs on
17 numerous occasions to Ocwen to verify the information that
18 was being disputed.

19 Q. And Equifax continues to report the same account twice
20 and at least up until September, 2014, it was still
21 reporting the Litton account; right?

22 A. Based upon the documents we received here today, yes.

23 We did discuss that Equifax advised Mr. Daugherty on or

24 about September 23rd of 2014 that two Ocwen accounts with

25 the same account number or numbers that start with the same

1 digits were not reporting on the Equifax credit file.

2 However, that time -- at that time we verified a Litton
3 Mortgage Service account that remained on the credit report
4 based upon the documents I reviewed today and the best of my
5 determination.

6 Q. Let's look at Exhibit 11. This is the letter that you
7 talked about earlier.

8 A. I have the document.

9 Q. How do you know Equifax received this document?

10 A. I can determine that Equifax received the documents
11 because on the bottom of the letter in the left-hand side
12 there is an indication of EFX, original document with a date
13 there, looks like May 30th of 2014. It is stamped and that
14 is a stamp that Equifax would put on a document that we
15 received by mail or by fax.

16 Q. Okay. So using that date stamp, this exhibit would
17 have been received by Equifax May 30th, 2014?

18 A. Yes.

19 Q. And that includes the subsequent pages; right?

20 A. Yes, it does.

21 Q. The first page of this letter it says, "Equifax is
22 still refusing to fix the huge mistake on our credit
23 record." Do you see that?

24 A. Yes, I do see that. A portion of the sentence that is
25 within this letter, yes, I do see that.

1 Q. And you are not aware of anything that Ocwen reported
2 that was inaccurate; right?

3 A. I don't think I understand your question. Could you
4 rephrase it?

5 Q. You are not aware of any data that Ocwen furnished to
6 Equifax or responded in the form of an ACDV response that
7 Ocwen provided that was incorrect; right?

8 A. To the best of my recollection, when I reviewed some of
9 the ACDVs based upon the consumer's dispute to Equifax and
10 Equifax starting a re-investigation and contacting Ocwen, I
11 believed there was at least one occasion where Ocwen changed
12 certain information on the accounts, or one or more of the
13 accounts. And, so, I don't know if that information was
14 accurate or not.

15 Q. So as you sit here today, you're not aware of any
16 single error that Ocwen ever made regarding Mr. Daugherty's
17 credit; right?

18 A. I don't understand your question.

19 Q. Let me try again. As you sit here today, you're not
20 aware of a single error that Ocwen ever made regarding any
21 of the data it furnished regarding Mr. Daugherty's account;
22 correct?

23 A. I am not in a position to determine whether or not
24 Ocwen made an error with the information it reported or not.
25 I think Ocwen would be the best source of that question, or

1 best in the position to answer that question.

2 Q. And Ocwen has stated in deposition that it did not make
3 any errors. You don't have any evidence to refute that, do
4 you?

5 A. I don't know if any of these documents refute or do not
6 refute that.

7 Q. Let's look at the second page of Exhibit 11. You'll
8 see it as another letter. I can't tell the date because it
9 says March 14th, 20- and then it doesn't have a year. Do
10 you see that?

11 A. Yes, I do.

12 Q. That's just missing. But your testimony is that
13 Equifax would have received it in May, 2014, based on the
14 stamp at the bottom; right?

15 A. That is correct. This document was included in a
16 letter sent to Equifax dated May 26th, 2014. This document
17 was included with the consumer's letter to Equifax.

18 Q. And in this letter, Mr. Daugherty or someone writing on
19 his behalf is saying he has one Ocwen account, and he
20 provides the loan number there, which matches the loan
21 number we identified as the account number on the ACDVs;
22 right?

23 A. Are you referring to the page March 14, 20-?

24 Q. Yes. About the middle of the page it says Ocwen loan
25 number 7092244537 which is the same account number we have

1 identified -- which is the same number we have identified on
2 the ACDVs that Equifax sent; right?

3 A. Yes, that is the same. Those appear to be the same
4 account numbers. However, I don't see that statement that
5 you indicate that he says this is one account that he has
6 with Ocwen.

7 Q. Well, there's only one number listed for Ocwen; right?
8 We can agree on that?

9 A. This document has Ocwen loan number and 7022 -- excuse
10 me -- 7092244537 on this page.

11 Q. That's the same account number that is on all these
12 ACDVs that Equifax sent; right?

13 A. I am just confirming that, yes.

14 Q. Mr. Daugherty doesn't identify that he has a second
15 account with a different number with Ocwen; right?

16 A. This page of the communication does not indicate that.

17 Q. You're not aware of any other document that anyone ever
18 told Equifax that Mr. Daugherty had a second account with
19 Ocwen; right?

20 A. Again, if I recall correctly, there were letters that
21 indicated Mr. Daugherty was disputing two Ocwen loans listed
22 on those letters, listed on those letters that had the same
23 account number and there were different dispute types for
24 each of those accounts.

25 Q. I'm sorry. Were you finished?

1 A. Yes, I was.

2 Q. Doesn't the same account number indicate we are talking
3 about one account?

4 A. I don't know. It depends. I mean, there could be
5 times a consumer is disputing a student loan that had the
6 first few digits and they are all the same. Those are not
7 duplicates. So I can't say whether or not it is a duplicate
8 or not.

9 There was certain information that was different about
10 the accounts that were reported on the Equifax credit file
11 such as the high credit, the balances, the status of
12 account, the open date of the account which perhaps
13 indicates that there was more than one account. But I don't
14 know whether that is so or not.

15 Q. You're not aware of any documents that indicate
16 Mr. Daugherty actually had two accounts even though Equifax
17 is reporting two accounts; right?

18 A. No, I am not. I haven't seen any other documents
19 outside of what Equifax received from the consumer and the
20 ACDV responses.

21 Q. Thank you. If you turn to the third page of Exhibit
22 11, it talks about -- it is another letter which you
23 identified Equifax as having received; correct?

24 A. Yes.

25 Q. So this one again references, "Ocwen has my mortgage

1 account 7092244537." Do you see that?

2 A. Yes.

3 Q. And he goes on to complain that Equifax is reporting it
4 as having a past due balance; right?

5 A. I'm looking at the balance, the letter, rather, and it
6 does say that, "Equifax also shows I have a past due
7 balance." I see that statement.

8 Q. And Equifax was sending these ACDV forms for the same
9 account reflecting that Equifax was reporting one tradeline
10 is current and the other tradeline is past due; right?

11 A. Yes. Equifax was reporting more than one account. And
12 one was reporting it as having I think an adverse status.
13 The other is a paid-as-agreed status, both with late payment
14 histories.

15 Q. Both with the same account number?

16 A. Yes.

17 Q. You would agree that it is incorrect for Equifax to be
18 reporting the same account twice with two informations;
19 right?

20 A. I don't know.

21 Q. Well, if there's only one account and its status is
22 established by the accurate data -- here ACDVs show Equifax
23 is reporting one account twice with different data. Doesn't
24 that indicate Equifax made a mistake here?

25 A. I don't know. I think that we contacted -- we

1 conducted a re-investigation of the disputes as we received
2 them and went to the source of the information. And Ocwen
3 responded to all of the ACDVs; in some instances, I believe,
4 updating information, verifying, or asking that Equifax
5 modify certain information. We were not advised to delete
6 the information in the credit file.

7 Q. Have you seen any of the ACDV responses from Ocwen for
8 Mr. Daugherty's account?

9 A. Yes, I have.

10 Q. Are you aware that Ocwen repeatedly responded to the
11 ACDVs showing him past due to correct it, to show current,
12 but Equifax failed to correct it?

13 A. I don't agree with that. I think that the -- based
14 upon what we reviewed today, the ACDVs we received two
15 different --

16 Q. I'm asking about whether you can identify a single ACDV
17 response from Ocwen as you sit here today.

18 A. We had several that were provided within the Exhibits 1
19 through 14.

20 Q. Let's make sure that that is clear in the record.
21 There are not responses from Ocwen. These are Equifax ACDV
22 requests for verification that went to Ocwen; correct?

23 A. No. This captures Equifax's re-investigation that was
24 sent to Ocwen and Ocwen's response to the ACDVs -- excuse
25 me -- ACDV.

1 Q. Okay. Well, our expert witness disagrees with you.

2 Can you identify where on here Ocwen provided a response to
3 an ACDV request from Equifax?

4 A. Sure. On Exhibit 1 Ocwen was contacted and the
5 responder's name, Raj Kumar, with a responder's phone
6 number, date of the response, the method or response code
7 which verifies correct as reported is contained within --

8 Q. Let me stop you there. I don't see that. Where is
9 that?

10 A. I will be more than happy to point that out to you. It
11 is under the tradeline information under the control number
12 and --

13 Q. Are you on the second ACDV?

14 A. I am on the first one.

15 Q. My order is off. Okay."

16 MR. KENNEY: Mr. Young states, "Might I suggest
17 the witness give us the last four digits of the control
18 number so we are all on the same number."

19 Mr. Manning says, "Let's use the Bates number."

20 MR. BROADWATER: I'm skipping to page -- excuse
21 me. I got a little lost there.

22 MR. KENNEY: So the witness says, "I'm looking at
23 Bates 34, 35, 30 and 31."

24 Mr. Manning picks up again stating:

25 Q. "So on this information on this sheet, where on the

1 sheet does it contain information that Ocwen responded with
2 to Equifax"?

3 MR. KENNEY: Mr. Young states, "Are we looking at
4 sheet 34, Bates 34, counsel?"

5 Mr. Manning states, "Yes."

6 Mr. Young, "Thank you."

7 A. "So if you look under the control number toward the
8 middle of those fields, rather, the grantor name, Ocwen Loan
9 Servicing, and followed by that is the responder name, and
10 followed by that is the responder's phone number and
11 response code from the responder.

12 Q. So make sure I'm on the same page as you. If you look
13 toward the bottom of Bates 34, it has an account status.
14 And it is your testimony that Ocwen responded to this ACDV
15 with current account under account status as well as current
16 account under payment rating. Isn't that right?

17 A. I was referring to the grantor name, the responder's
18 name, response date, and response code verified correct as
19 reported.

20 Q. See the bottom of the page, account status?

21 A. I do.

22 Q. Is it your testimony that Ocwen responded to the
23 account status and payment rating with the statement
24 "current account"?

25 A. No. It is my testimony that Ocwen responded and did

1 not advise Equifax to modify any information in the account
2 status field, and they verified the account correct as
3 reported.

4 Q. Is it your testimony that because Equifax was reporting
5 this account for this ACDV is current in account status and
6 payment rating that Ocwen verified it to be accurate?

7 A. I am stating that Equifax contacted Ocwen via the ACDV
8 process. And the response was that the account was verified
9 correct as reported in regards to ACDV EIS number 34.

10 Q. And I'm asking you what that means because here I think
11 we're reading the same page. The account status and payment
12 rating are listed as current; right?

13 A. Yes. When the ACDV was sent to Ocwen, the account
14 status showed current account. However, if Ocwen wanted to
15 modify that information, there would be another account
16 status underneath that.

17 And, so, Ocwen verified the account as correct as
18 reported when it checked off the box in the response code
19 "verified as reported."

20 Q. Okay. So by checking the box "verified as reported"
21 here, Ocwen confirmed that the account was current; right?

22 A. Yes.

23 Q. So this document -- I think Mr. Young asked you about
24 this. This is not a document that came from Equifax; right?
25 This is something -- I'm sorry. It didn't come from Ocwen.

1 It is something generated from Equifax itself?

2 A. It is my understanding that this is Equifax's
3 memorialization of the ACDV process. And so that that
4 process, because it is electronic, this is how Equifax
5 captures -- Equifax sent out the ACDV and then how the
6 response was received from the furnisher.

7 Q. Which means that there is some person, not you, at
8 Equifax that was receiving Ocwen's response to the ACDV and
9 interpreting it and determining what to report on this form;
10 right?

11 A. No. I don't know if this was handled through an
12 automated process completely or whether or not it was
13 handled by a live agent. However, it is my understanding
14 that there, during the ACDV process, Ocwen is one, is the
15 one who has completed the verification and determined the
16 information should be verified, modified, deleted, or
17 deleted as fraud. In this case, Ocwen advised Equifax that
18 the information was verified as reported.

19 Q. And verified as reported pertains to the specific
20 disputes that are identified by Equifax on the dispute at
21 the top of the page; right?

22 A. Yes, that is correct. My understanding that they
23 verified the dispute that was initiated. It -- I'm sorry.
24 Yes, that is correct. My understanding is they verified the
25 dispute that was initiated during the re-investigation.

1 Q. And it is accurate that this was an account --
2 actually, I should ask whether you know. Do you know
3 whether it is accurate that Mr. Daugherty, in fact, had this
4 account with Ocwen and that he was current? Do you know?

5 A. Could you rephrase your question?

6 Q. There are two dispute codes on EIS 34. And it's your
7 testimony that Ocwen did what it was supposed to be
8 responding to the specific disputes identified. And you
9 don't -- do you know whether that is accurate?

10 A. I still don't understand the question you are asking
11 me.

12 Q. So you don't know whether this form was generated by a
13 human being or a computer; right?

14 A. No, I don't know whether or not the information
15 processed here as part of the verification was processed
16 through an agent or an electronic means. Based upon looking
17 at the ACDV, I don't know. But that is something, you know,
18 that could be determined.

19 Q. Further discovery. You just don't know today?

20 A. Correct.

21 Q. You don't know how this document was created. And
22 that's true for all these ACDVs; right?"

23 MR. KENNEY: Mr. Young states, "Excuse me. I hate
24 to interrupt, Mr. Manning. I just want to make sure that
25 you and the witness, when you say "this document" you're

1 referring to the document that is Bates number 34."

2 Mr. Manning states, "Correct."

3 Mr. Young states, "Okay. Carry on. Thank you. Sorry
4 to interrupt."

5 Mr. Manning begins again:

6 Q. "I will re-ask it. Make sure we are all on the same
7 page.

8 Ms. Munson, you don't know how this document Bates
9 stamped 34 was created, nor do you know how any of the other
10 ACDVs that are identified as exhibits to this deposition
11 were created; correct?

12 A. No, that's incorrect. I recall that the majority of
13 the disputes that Equifax received were disputes that we
14 received by mail from the consumer. Therefore, an agent
15 would have reviewed the consumer's dispute letters and
16 created these ACDVs.

17 Q. All right. So as you sit here today, can you identify
18 for me the process by which the ACDVs identified in this
19 deposition were created?

20 A. Yes, I can.

21 Q. All right. Let's start with one. Is it generated by a
22 computer or by a human?

23 A. This was initiated by a dispute that Equifax received
24 by mail, and an agent would have started the
25 re-investigation, the ACDV process.

1 Q. And you are referring to EIS 30 right now?

2 A. I was referring to 34 because that's the one I have in
3 front of me, but 30 would be the same.

4 Q. How do you know that?

5 A. For some reason, I remember the consumer's first
6 dispute. I remember that it was received by mail. I know
7 the Equifax process is that an agent would have reviewed the
8 letter to start an ACDV process and start the
9 re-investigation process of the consumer's concern.

10 Q. So is it your testimony that the April 30th, 2013, ACDV
11 is the first dispute by Mr. Daugherty?"

12 THE COURT: Mr. Kenney, find a convenient stopping
13 place and we'll break for lunch, please.

14 A. "Yes, I am."

15 MR. KENNEY: Can you remind me what line we're at?

16 MR. BROADWATER: I just read line 25 on Page 95.

17 Q. "Okay. And what is your basis of stating that?

18 A. This is the first ACDV that we have in the consumer
19 documents as the earliest date. Therefore, that leads me to
20 believe that this was the first dispute from the consumer
21 based upon reviewing these documents today.

22 Q. But I thought you said you hadn't gone back and
23 reviewed the entire production of a thousand pages; is that
24 right?

25 A. That is correct. I said based upon these ACDVs, this

1 is the oldest one.

2 Q. Oh, Okay. So there may be one that is earlier. You're
3 saying of the exhibits that plaintiff provided you today,
4 this is the earliest. So you're assuming it was the first
5 one, but you don't know?

6 A. Yes."

7 MR. BROADWATER: Do you want to skip to the next
8 page at line 5?

9 MR. KENNEY: Sure.

10 Q. "Let me try it this way. Exhibit 1 has two ACDVs;
11 right, Ms. Munson?

12 A. That's correct.

13 Q. You don't know whether these, those documents marked as
14 Exhibit 1 are the first disputes or not; correct?

15 A. No. I believe these are the first disputes. They have
16 the oldest date. And, so, I believe this was the first
17 dispute in regards to the Ocwen account.

18 Q. So are you basing that on the fact that you have only
19 been provided the documents and you have only reviewed the
20 documents that are marked as deposition exhibits, but there
21 is a thousand other pages; right?

22 A. That's my understanding from today's deposition, that
23 there are a thousand pages, correct.

24 Q. So there may be disputes that are earlier in time that
25 occurred prior to Exhibit 1. You just don't know?

1 A. As we sit here today, I believe this is the first
2 dispute based upon the documents that were produced."

3 MR. KENNEY: Your Honor, I think this would be a
4 good stopping point. There are only three more pages of
5 this transcript.

6 THE COURT: Three pages with 12 pages on them?

7 MR. KENNEY: Yes, Your Honor.

8 THE COURT: All right. Let's stop then, Mr.
9 Kenney. Thank you. We'll resume after lunch.

10 To make that clear, each of those 8 x 11 inch pages has
11 four deposition pages on it; is that correct?

12 MR. KENNEY: That's correct, Your Honor.

13 THE COURT: All right. We'll recess for lunch.

14 While you're out, do not discuss this case among
15 yourselves or permit anyone to discuss it with you or in
16 your presence. Ladies and gentlemen, please be in your jury
17 lounge this afternoon at 1:30. We'll stand in recess.

18 (Recess taken from 12:15 p.m. until 1:30 p.m.)

19 THE COURT: Good afternoon, everyone.

20 Mr. Kenney.

21 MR. KENNEY: If it please the Court, we'll just
22 pick up right where we left off.

23 THE COURT: Whether it pleases the Court or not,
24 you can. Nothing personal to you, Mr. Kenney.

25 MR. KENNEY: I appreciate that, Your Honor.

1 (The deposition testimony of Latonya Munson was resumed
2 as follows:)

3 Q. "I'm going to turn to Exhibit 12 to ask you about what
4 is referenced on Bates stamp 318 as images sent. Do you see
5 that, Ms. Munson?

6 A. Yes, I do.

7 Q. There are no images attached to these ACDVs. This page
8 EIS 318 indicates that this document is incomplete because
9 there were images provided but they are not attached as an
10 exhibit. Is that accurate?

11 A. The ACDV indicates that an image was sent when the ACDV
12 was sent to Ocwen. However, if you are asking me whether or
13 not the document that was sent is part of the exhibit today,
14 no, it is not.

15 Q. So we can agree, Ms. Munson, those images are not part
16 of the exhibit. Therefore, these exhibits that include
17 images sent are incomplete; right?

18 A. They are not here today, so they are not part of this
19 exhibit.

20 Q. Do you know whether Equifax produced them or not?

21 A. Yes. It would be my -- or to the best of my
22 recollection, there is -- when we would have provided
23 Equifax's counsel with the documents, we would have included
24 a copy of the dispute letter.

25 Q. Yeah. My question is do you agree that this document

1 is incomplete because it does not include the images sent
2 that are referenced on EIS 318 which is also true about a
3 number of these other ACDVs; correct?

4 A. I don't think I agree with you. I think that the ACDV
5 indicates that we sent an image to the furnisher, and that
6 image is associated with Equifax having sent something to
7 Ocwen during this ACDV process.

8 Q. I understand that your testimony is that it indicates
9 something was sent. But you don't know what was sent or if,
10 in fact, it was produced; correct?

11 A. No. I will clarify that. I would indicate that
12 Equifax either received a dispute letter or a fax, that we
13 sent out an ACDV to Ocwen and included one of those, either
14 a dispute letter or a fax. And those would be the only
15 documents that we would have received from the consumer and
16 imaged. And, therefore, the ACDV tells me that we sent
17 either a mail dispute or an image or mail dispute or fax to
18 Ocwen.

19 Q. Let's focus just on the question. Exhibit 12, EIS 318
20 references two images as a TIF file; right?

21 A. It is one image that indicates it is stamped here
22 twice, correct.

23 Q. You don't know what images are being referenced on that
24 document, do you?

25 A. No, I do not know the specific image that was sent in

1 addition to this ACDV. I know that it was a letter or a
2 fax.

3 Q. You don't know whether it was produced in this case, do
4 you?

5 A. Because I am the person that pulled these documents, it
6 would be reasonable for me to say that I pulled the
7 corresponding letter or fax and would have provided that
8 information to Equifax's outside counsel.

9 Q. But you can't tell me what the Bates stamp is today;
10 right? You don't know for sure?

11 A. No, I don't know the Bates number.

12 Q. Right. You're just going based on your habit to have
13 provided it. But you don't know what the document is or
14 whether, in fact, it was produced; correct?

15 A. As I sit here today, again, it is our process that I
16 would have printed any documents associated with this ACDV
17 and sent that information to Equifax's counsel. I don't
18 know the Bates number. I don't know what the contents of
19 the document would have been. I have no reason to believe
20 that I would not have provided that information to Equifax's
21 counsel.

22 Q. All right. Let's look at the next page, EIS 320,
23 historical account data. Do you see that?

24 A. Yes, I do.

25 Q. What does this information reflect? What is it?

1 A. This information reflects that Equifax captured certain
2 balances, scheduled payment, actual payment, date of last
3 payment, high credit in the month of October, 2013, and
4 August of 2013.

5 Q. Who would have provided it? I'm sorry. Go ahead.

6 A. Also the type of loan.

7 Q. Where would Equifax have obtained that information
8 from?

9 A. That information would have come from Ocwen Loan
10 Servicing.

11 Q. How do you know that?

12 A. I'm familiar with what historical account data means.

13 Q. So because you didn't prepare this document, you don't
14 know how it was actually prepared. You're just going based
15 on your knowledge of how generally Equifax's system works.
16 Is that fair?

17 A. Yes, it is. I'm speaking about the historical account
18 data as it has been explained to me.

19 Q. But you don't have any personal -- you don't have any
20 personal knowledge of that?

21 A. I don't have anymore knowledge as far as it would have
22 been explained to somebody in my position in regard to the
23 historical account data. I am not in an area that maintains
24 that information.

25 Q. The other ACDVs in the exhibits provided here that also

1 list images have been sent with TIFs that are not provided
2 or also incomplete; correct?

3 A. I believe that the ACDVs that indicate that images were
4 sent do indicate that a document such as a letter or a fax
5 was sent through the ACDV process to Ocwen. However, these
6 exhibits do not contain that information here today.

7 Q. You don't have any knowledge as you sit here today why
8 Equifax was reporting the same Ocwen account twice; correct?

9 A. Whether the information would have been furnished by
10 Ocwen to Equifax and, therefore, it would have been compiled
11 in the Equifax's credit report?

12 Q. Right. But you already said you haven't reviewed and
13 haven't seen the data that Ocwen actually furnished to
14 Equifax, so you don't know; right?

15 A. No, I have not seen the data as it reported via tape to
16 Equifax.

17 Q. Who at Equifax would actually have the knowledge about
18 why Equifax continued to report the same Ocwen account twice
19 incorrectly? Who at Equifax would know why Equifax was
20 reporting the same Ocwen account twice?

21 A. I'm not sure.

22 Q. Is there someone who would have more personal knowledge
23 other than you as to why Equifax never told Ocwen that it
24 was reporting the same Ocwen account twice?

25 A. Perhaps the plaintiff if the plaintiff would have

1 disputed that it was duplicated. Equifax would have
2 forwarded that information to Ocwen during the process.

3 Q. And you can't point to a document where the plaintiff
4 ever said duplicate tradeline; correct?

5 A. Not that I recall."

6 THE COURT: Mr. Young.

7 MR. YOUNG: Thank you, Your Honor.

8 Plaintiff moves the admission of deposition Exhibits 1
9 through 15 which have been renumbered for trial purposes as
10 Exhibits 11 through 24.

11 THE COURT: All right.

12 Mr. Manning, anything other than what we've discussed?

13 MR. MANNING: No, Your Honor.

14 THE COURT: All right. I'll admit Plaintiff's
15 Exhibits --

16 Give me the numbers again, Mr. Young.

17 MR. YOUNG: Numbers 11 through 24, Your Honor.

18 THE COURT: -- 11 through 24, preserving the
19 defendant's objection and exception. They can be published
20 at your discretion.

21 MR. YOUNG: Thank you, Your Honor. I'm just going
22 to publish a few and then move on. Thank you.

23 For the record, I'm publishing Exhibit Number 11, an
24 Automated Consumer Dispute Verification dated April 10,
25 2013. And I'm now displaying the upper left-hand corner

1 which shows the responder name and the response date and
2 response code.

3 MR. MANNING: Your Honor, --

4 THE COURT: Yes, sir.

5 MR. MANNING: -- may I have a brief sidebar?

6 THE COURT: Yes, sir.

7 (Bench conference on the record)

8 THE COURT: I want you to be able to address the
9 record, Mr. Manning, but I think we are a step ahead of
10 where we left off. My recollection is that I've ruled on
11 the use of them. And then there was a hearsay objection
12 which I said I would wait until I saw how plaintiff wanted
13 to use the document.

14 MR. MANNING: Yes.

15 THE COURT: Go ahead.

16 MR. MANNING: I had two comments on that.

17 Your Honor heard the testimony. A number of times the
18 witness said that she wasn't involved in the creation or
19 preparation of any of those documents and had no personal
20 knowledge about them with the exception of Exhibit 15 which
21 is the one she actually did participate in.

22 So she's not in a position to talk about how they were
23 created or maintained and it's -- I don't believe it
24 satisfies the hearsay exception with the exception of
25 Exhibit 15.

1 The second thing I was going to note is I don't believe
2 Mr. Young can give any commentary about the documents except
3 in his closing. There's no witness to testify about these.
4 He can -- they're in evidence. Your Honor has ruled so. So
5 they can go back with the jury after the conclusion of the
6 case. But it's improper, I believe, to now have him stand
7 up and say anything about the document.

8 THE COURT: Mr. Young, anything you want to place
9 on the record?

10 MR. YOUNG: Your Honor, I was trying to be
11 exceedingly fair and merely indicating a portion of the
12 document because I didn't introduce them one by one as the
13 deposition took place and display each one.

14 The way they're displayed, it's hard to see them and I
15 wish to blow up and show a portion of a few of them to the
16 jury without any commentary other than showing the upper
17 left-hand corner, as I said, or this is dated such and such.

18 THE COURT: Well, the -- you will not be permitted
19 to comment on them, obviously, unless you want to take the
20 oath and get on the witness stand, which I doubt you want to
21 do. That is improper.

22 But, again, gentlemen, I think that we're a step ahead.
23 I have not placed on the record any ruling about the
24 admissibility and the objection as to hearsay.

25 If I understand, these documents -- I've given this

1 some consideration and I want to hear you on this.

2 Mr. Young, as I understand, these documents are being
3 put into evidence to show what information Ocwen submitted
4 to Equifax. Is that correct or not?

5 MR. YOUNG: That's correct, Your Honor.

6 THE COURT: All right. This is my ruling.

7 In listening to the testimony of the witness from
8 Equifax, Mr. Manning, when I look at the criteria for
9 establishing a business record, I think when looking at her
10 testimony overall she establishes the criteria, even though
11 she wasn't personally involved with each of those documents.

12 Obviously, if we always had someone with personal
13 knowledge it would alleviate the reason for the rule, the
14 hearsay rule because they would have personal knowledge and
15 be able to testify. So I find them admissible under that
16 exception.

17 But, more importantly, these are not being offered for
18 the truth of what's asserted. This gentleman has testified
19 that he was current with Ocwen. They're not being offered
20 for that purpose. They're being offered to show what
21 information Ocwen sent to Equifax, which means to me that
22 they're not offered for the truth of what's contained in
23 them.

24 And if I'm missing something as to why they're being
25 offered, I want you to tell me. I do not believe, based on

1 what I understand their purpose to be, Mr. Manning, that
2 they are hearsay.

3 The other thing I will place on the record is that when
4 you look at 801, they are statements by a representative or
5 an employee of Ocwen who has put information on these
6 documents. And, so, there's also information in them that
7 could be considered a statement against a party opponent by
8 a representative of that party.

9 So for all of those reasons, I think there's not a
10 hearsay issue but primarily, if I understand their use as
11 I've placed it on the record, they're not being used for the
12 truth of what's contained in them. So I don't believe that
13 there is a hearsay issue.

14 In the event there is, though, there's 801 as well as
15 the business records exception that I do believe and I find
16 have been met.

17 For all of those reasons, I preserve the defendant's
18 objection and exception to their admissibility and I admit
19 them and they can be published without comment, Mr. Young.

20 MR. YOUNG: Your Honor, when you say "without
21 comment," may I indicate the date of the document or the --

22 THE COURT: You can indicate the exhibit number.
23 The jury just heard the numbers that were being placed into
24 evidence. You can indicate the exhibit number and the date
25 on the document, but nothing further.

1 Mr. Manning, do you object to that portion of comment?

2 If you do, I want to --

3 MR. MANNING: I do because I don't -- I believe
4 any commentary by the attorney is improper. He would need a
5 witness here to do that.

6 The other point, if I may, Judge, on the truth of the
7 matter, I understand your ruling and I respect it. My
8 understanding is there's no -- that the plaintiff is
9 intending to use that to show the truth of what Ocwen
10 responded, "Does this accurately reflects what Ocwen's
11 response was?" And this witness said she doesn't know.

12 THE COURT: Well, that's a different truth. It's
13 not the truth of what's contained in the document or whether
14 or not this man was accurate. Let's say Ocwen reported that
15 he was current. They're not offering it to show that he was
16 current. They're offering it to show what information Ocwen
17 sent to Equifax. That's different. The witness himself in
18 terms of substantive evidence has testified that he was
19 current. That's substantive.

20 This is not being offered to show whether or not he was
21 current, which is the information contained in it. It is
22 being offered, as I understand plaintiff's case, to show
23 what information Ocwen submitted to Equifax.

24 Again, for those reasons, I preserve the defendant's
25 objection and exception.

1 You can publish these by referring to the exhibit
2 number and the date, nothing further.

3 And to that I preserve Ocwen's objection and exception
4 as well.

5 MR. YOUNG: Understood. Thank you, Your Honor.

6 MR. MANNING: Thank you, Judge.

7 (Bench conference concluded)

8 MR. YOUNG: May I proceed, Your Honor?

9 THE COURT: Yes.

10 MR. YOUNG: Thank you.

11 Exhibit 11 dated April 10, 2013, --

12 THE COURT: It has been admitted into evidence.
13 Is that correct, counsel?

14 MR. YOUNG: Yes, Your Honor.

15 THE COURT: All right. I just wanted to make sure
16 it was one of the ones that I just admitted into evidence.

17 MR. YOUNG: I'm now going to publish Exhibit,
18 Plaintiff's Exhibit 12.

19 Plaintiff's Exhibit 13 is being published. The date is
20 July 24, 2013.

21 Plaintiff's Exhibit 14 is being published, response
22 date of October 11, 2013.

23 Fourth page of the same exhibit, response date of
24 October 11th, 2013.

25 First page of Plaintiff's Exhibit number 15 with a

1 response date of December 2nd, 2013.

2 The fourth page of the same exhibit, the first page of
3 Exhibit 16, January 17, 2014.

4 The third page of the same exhibit, same date,
5 January 7, 2014.

6 First page of Exhibit 17, March 23rd, 2014.

7 Fourth page of the same exhibit having the same date.

8 I'll skip ahead to the last exhibit -- excuse me -- to
9 Exhibit Number 23. First page, August 8th, 2014.

10 I apologize. I've confused myself. I'm going to
11 publish one more.

12 Exhibit 19, first page, date 5-5 of '14.

13 Same Exhibit 19, same date, 5-5 of '14, the fourth page
14 of the exhibit.

15 Thank you, Your Honor.

16 THE COURT: Call your next witness, counsel.

17 MR. NOLAN: Your Honor, at this time we'd like to
18 call Steven Napier and present him through his deposition
19 testimony.

20 THE COURT: Yes, sir.

21 MR. BROADWATER: Hello again.

22 THE COURT: Mr. Broadwater.

23 MR. KENNEY: May we proceed, Your Honor?

24 THE COURT: Yes, sir.

25 **STEVEN NAPIER, PLAINTIFF'S WITNESS, CALLED BY**

1 **DEPOSITION AS FOLLOWS:**

2 DIRECT EXAMINATION

3 BY MR. KENNEY:

4 Q. "Now I'd like to, I'd like -- I'd ask you to please
5 state your name and date of birth on the record, please.

6 A. Steven F. Napier, May 14, 1965.

7 Q. And how long have you been working for One Community?

8 A. I have been with One Community since 2006, but in the
9 credit union business since 1995.

10 Q. And what is your current position with One Community?

11 A. The Operations Manager.

12 Q. And when you were hired at One Community, what was your
13 position?

14 A. Operations Manager.

15 Q. So is it fair to say that the entire span of your
16 employment with One Community you've been the Operations
17 Manager?

18 A. Yes, sir.

19 Q. Okay. And what are your duties as Operations Manager?

20 A. I have multiple duties as far as the oversight of the
21 overall general operations of the credit union and as far as
22 supervision of its staff, procedures, and policies.

23 Q. Okay. And did you receive any sort of specialized
24 training other than your Bachelor's before taking this
25 position?

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1 A. Just various trainings throughout the years of being in
2 the credit union movement as far as seminars or webinars,
3 things along that nature.

4 Q. And is this just internal training that's done by the
5 bank?

6 A. No. Most of it was done either by lead services or
7 other third-party institutions.

8 Q. Okay. And do you understand that you are testifying
9 today both in your personal capacity and as the
10 representative of One Community?

11 A. Yes, sir.

12 Q. And do you understand that the questions that you give
13 today are binding on One Community?

14 A. Yes, sir.

15 Q. Okay. I'd just like to ask you now a couple of
16 questions about your relationship with the plaintiff in this
17 case, Mr. Daugherty. Do you recall when you first met
18 Mr. Daugherty?

19 A. It was many years ago, many, many years ago at a former
20 credit union that I used to work at. He was one of our
21 members in another credit union I used to work at years ago.

22 Q. Okay. And do you have an approximation? Has it been
23 10 years? 20 years?

24 A. If I had to guess, I would say it's probably been
25 around 10 years.

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1 Q. Okay. And when you had moved over to One Community, is
2 this about the time that Mr. Daugherty had moved over to One
3 Community?

4 A. I think Mr. Daugherty had been at One Community long
5 before I got there. I think he was a member there long
6 before that time.

7 Q. Okay. And specifically about in the last three years
8 or so, I understand Mr. Daugherty had got a couple of loans
9 from One Community; is that right?

10 A. I think that he had gotten some car loans and maybe
11 some unsecured loans at One Community during that time.

12 Q. And did he ever interact with you when trying to get
13 any of the loans, the car loan?

14 A. Most of the time, the loan officers dealt with David.

15 Q. Have you ever dealt with him directly?

16 A. Not directly on a loan. I would sometimes look at some
17 of his requests after the fact.

18 Q. Do you know if you ever discussed applying for or being
19 denied for credit as a result of what appeared on his credit
20 report?

21 A. Not until this mortgage loan. When he was looking to
22 refinance his house with us, Debbie Lee (phonetic) is
23 actually the first person that talked with him. And for One
24 Community procedures, if there's a person that's in
25 bankruptcy or foreclosure, then we're not allowed to proceed

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1 with that loan as far as doing any other steps into that
2 loan.

3 Q. Do you recall when Mr. Daugherty had first spoken with
4 One Community regarding attempting to refinance his
5 property?

6 A. Debbie Lee had brought that to my attention and wanted
7 to know if there was anything that we could do for him. But
8 I told them with the foreclosure we couldn't proceed any
9 further.

10 Q. Do you recall when he first sought to refinance with
11 One Community?

12 A. No, I don't remember the exact dates.

13 Q. And did he ever tell you or anyone at One Community
14 that his credit report was reflecting the property as being
15 in foreclosure?

16 A. No. The only thing he said that he had some credit
17 report issues that were in error, that they weren't correct.

18 Q. Did he tell you anything -- did he tell you or One
19 Community anything specifically about the Ocwen tradelines
20 that were appearing on his credit report?

21 A. The only thing he said was Ocwen had things on his
22 credit report that were not correct. That's basically all
23 that he said until we actually pulled credit on him.

24 Q. Okay. And how many times did Mr. Daugherty meet with
25 One Community to discuss this refinance?

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1 A. I believe that he met with Debbie Lee one time. And
2 there -- he came into my office one time and talked with me
3 about the possibilities of it. So a total of just two times
4 that I can remember.

5 Q. Were there any other employees at One Community that
6 worked with Mr. Daugherty about this refinance?

7 A. Not on the mortgage, no.

8 Q. And I know that you had said that he had spoken with
9 Debbie Lee and he had spoken with you. Do you recall when
10 he had spoken with you?

11 A. If I had to guess, I would say it was probably maybe
12 May of 2014 possibly, somewhere in that time frame.

13 Q. And do you recall when he had first spoken with Debbie
14 Lee?

15 A. I would say it was probably within that same month.
16 And don't quote me on that. I'm not exactly sure of those
17 dates.

18 Q. Okay. And I'd like to ask you now just a couple
19 questions about the documents that were produced in response
20 to the subpoena. I'd like to -- I'd first like to look
21 at -- it looks to be some computer notes. I believe these
22 were what was previously marked as tab seven.

23 Mr. Napier, are you familiar with this screen print?

24 A. Yes, sir.

25 Q. And can you just describe generally what this is?

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1 A. This is basically a loan officer's comments about a
2 loan that is being applied for. And this is where they put
3 in their notes so two months down the road we can remember
4 why we did what we did.

5 Q. So this was not Debbie Lee or you. This is a separate
6 employee of One Community?

7 A. Yes, sir. That 001 up there in the square, and it's
8 got the 731, that 001 is a teller ID. And that belongs to
9 our own loan officer named Stacie Darling. So this would be
10 her notes.

11 Q. Okay. But Ms. Darling didn't have any direct
12 interaction with Mr. Daugherty; is that right?

13 A. Not about the mortgage loan, correct.

14 Q. And this was just her notes after reviewing his file;
15 correct?

16 A. Correct, about a consumer loan.

17 Q. And these notes, the first one here appears to be dated
18 July 23rd, 2014, at 10:38 a.m. Is that right?

19 A. Yes, sir.

20 Q. And is this the date this note would have been entered?

21 A. Correct.

22 Q. And just going through the notes here, I see it
23 mentions a couple of tax liens. Are you aware of any tax
24 liens that were appearing on Mr. Daugherty's credit report?

25 A. Yes, sir.

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1 Q. And what is your understanding of those tax liens?

2 A. They -- from my understanding, they were federal or
3 state tax liens. I think they were federal tax liens.

4 Q. And these were outstanding non-paid liens?

5 A. Yes, sir. They were outstanding liens. That was part
6 of the reason that he was asking for the refinance, I
7 believe, was to refinance a house so he could pay those tax
8 liens.

9 Q. Okay. And it looks like there's a note in here about a
10 van. It's notated. It says, "Member wants loan to repair
11 van instead of taking on a new car payment, LTV," which I
12 imagine stands for loan to value. Is that correct?

13 A. Yes, sir.

14 Q. And, so, these notes are with regard to a consumer loan
15 to repair a van it appears; is that correct?

16 A. Correct.

17 Q. Okay. And on the next page there's another entry of
18 notes underneath this note. And this one looks like it's
19 also dated July 24th, 2014. It looks like it says, "I've
20 known Dave for a long time. I believe he will pay. Other
21 income not included from the business. Value of the van
22 will cover most of the loan if push comes to shove." And it
23 looks like that's your name; is that right?

24 A. Yes, sir.

25 Q. So was this an entry made by you?

1 A. Yes.

2 Q. So when Mr. Daugherty was applying for this consumer
3 loan, what was the process for that? The consumer loan with
4 regard to this van that's being spoke of in these notes
5 here, what is the process for applying for that loan?

6 A. He would have come in and talked to Stacie Darling and
7 applied for the loan. And if I remember correctly, Stacie
8 come around and had talked to me about the loan, wanted to
9 make sure we were comfortable granting the loan for the van
10 repairs.

11 Q. Was there any formal application that was made with
12 regard to this private consumer loan?

13 A. Yes.

14 Q. And what did that application involve?

15 A. What a normal process you'd go through for an
16 application; name, address, Social Security number, income.

17 Q. Was there a credit check that was done with regard to
18 this loan?

19 A. I'm almost positive there was, yes.

20 Q. And that credit check would have been done within the
21 same time period, July 24th, 2014?

22 A. Yes, sir.

23 Q. And it looks like he was ultimately approved for this
24 loan; right?

25 A. Correct.

1 Q. Okay. I'd like you to turn now to the affidavit that
2 you had submitted. Mr. Napier, are you familiar with this
3 document?

4 A. Yes, sir.

5 Q. And this is an affidavit that was executed by you; is
6 that correct?

7 A. Correct.

8 Q. Did you write this affidavit?

9 A. Yes.

10 Q. I'd like to turn to Paragraph 4 here which says, "One
11 Community Federal Credit Union procedures require that the
12 lending process ends if an applicant is in bankruptcy or
13 foreclosure."

14 A. Okay.

15 Q. Is that right?

16 A. Yes, sir.

17 Q. And I understand that the context of this was that
18 because there was a foreclosure appearing on Mr. Daugherty's
19 credit report, there was no further inquiry in the
20 application process; is that right?

21 A. Correct. We could not proceed any further with the
22 process.

23 Q. And how did you know that the foreclosure was
24 appearing?

25 A. It showed up on his tri-merge credit report when Debbie

1 Lee pulled credit on Mr. Daugherty.

2 Q. So in connection with this refinance, you had actually
3 run a credit inquiry; is that right?

4 A. Yes.

5 Q. And going back to this affidavit, Paragraph 5 says,
6 "Although Mr. Daugherty had state tax liens on his credit
7 report and other collections, the credit union may have
8 offered a loan to Mr. Daugherty because of his history with
9 the credit union." Is that correct?

10 A. Yes, sir.

11 Q. And I understand you've written here the word "may."
12 And I just want to ask, you can't say with reasonable
13 certainty that One Community would have offered this loan;
14 is that correct?

15 A. Correct, too many variables.

16 Q. And you have here at the bottom of it, "May have
17 offered a loan to Mr. Daugherty because of his history with
18 the credit union." However, it's not a, it's not a common
19 practice to approve loans simply because of a relationship
20 with One Community. Is that right?

21 A. It depends on the situation and the individual.

22 Q. If there were adverse tradelines on a consumer's credit
23 report, it wouldn't be the normal practice of One Community
24 to approve a large refinance such as the one at issue here
25 simply on the basis of the, of the consumer's relationship

1 with the bank; is that correct?

2 A. Correct.

3 Q. And, so, the last paragraph here, Paragraph 6, says,
4 "The credit union cannot proceed with the loan after noting
5 that Ocwen reported to Equifax that his home is in
6 foreclosure." Is that right?

7 A. That's correct.

8 Q. So what would be the next step after a credit report is
9 run? What would be the next step in proceeding with the
10 loan application?

11 A. They would make sure that the -- probably the next
12 thing is to make sure that the debt-to-income ratio would
13 fall in line.

14 Q. And how about after that? I'm asking in your typical,
15 in your typical loan such as the one at issue here, after a
16 credit report is run I'm just wondering what the next steps
17 are to proceed with the loan application that would
18 ultimately lead to approval or denial.

19 A. Yeah. You've got several factors that would be
20 involved. You'd have to look at a debt-to-income ratio.
21 You'd have to look at the loan-to-value ratio. Okay. You'd
22 have to look at the number of tradelines the member may or
23 may not have. There's several factors involved in going
24 through whether you're going to approve or deny a loan.

25 Q. And it's my understanding that there was no

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1 debt-to-income ratio analysis that occurred here, is that
2 correct, with Mr. Daugherty?

3 A. Correct. Once the foreclosure was reported, everything
4 stopped.

5 Q. And there was no loan-to-value analysis with
6 Mr. Daugherty; is that correct?

7 A. Correct.

8 Q. So even if Mr. Daugherty had no foreclosure appearing
9 on his credit report, it is possible that he could have
10 still been ultimately denied for the loan depending on the
11 debt-to-income ratio and the loan-to-value ratio?

12 A. Yes, that's true.

13 Q. Did Mr. Daugherty ever fill out a formal credit
14 application?

15 A. I don't know. I wasn't in when Debbie Lee took the
16 application, but I'm assuming he did.

17 Q. Is this a common practice that a consumer would fill
18 out a formal loan application before a credit inquiry would
19 be run?

20 A. Yes.

21 Q. And when One Community runs their credit check, is
22 there a particular service they use? For example, do they
23 typically check the TransUnion FICA score, Equifax or
24 Experian?

25 A. On the mortgages? Mortgage loans are what they call a

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1 tri-merge. They pull all three. And then on the consumer
2 side, we pull a TransUnion credit score.

3 Q. I'm sorry. So who pulls the TransUnion?

4 A. On the consumer side, it's TransUnion.

5 Q. Oh, for consumer loans it's a TransUnion report. And
6 for the mortgage loans, it's the tri-merge. Is that right?

7 A. Yes, sir.

8 Q. Okay. I understand. So going -- I'd like to discuss
9 the TransUnion report that was produced. Mr. Napier, the
10 first page here of Exhibit 5 is a CBC Innovis. Do you see
11 that?

12 A. Yes, sir.

13 Q. It looks like it says "in file credit report." Is that
14 right?

15 A. Correct.

16 Q. Can you tell me what that document is?

17 A. This is the tri-merge report that would be pulled for a
18 mortgage application.

19 Q. Okay. And this is done -- is this done internally
20 within the bank or how do you -- how does One Community
21 obtain a tri-merge report?

22 A. We input the system, put the information into the
23 system, and then it creates the tri-merge report. And then
24 we can print it off for review.

25 Q. When you say "the system," do you mean One Community's

1 own computer systems?

2 A. Yes. And I think that ties in with the CBC.

3 Q. Okay. And on the next page it looks like there are a
4 couple entries here about tax liens; is that right?

5 A. Yes, sir.

6 Q. And on the page after that, the next page, it looks
7 like there are some entries there for Ocwen Loan Servicing.
8 Do you see that?

9 A. Yes, sir, on the bottom of the page.

10 Q. One of them says "foreclosure process started." Do you
11 see that one?

12 A. Yes, sir.

13 Q. And to the right of that it says EFX 01; is that
14 correct?

15 A. Correct.

16 Q. Does that mean that the foreclosure was appearing on
17 the Equifax report?

18 A. Yes.

19 Q. And the entry above that, it also says "Ocwen loan" and
20 it has the same number. Do you see that?

21 A. Correct.

22 Q. Does that mean that these two entries are for the same
23 loan?

24 A. That's what we weren't clear on. It could be. I'm not
25 real, real sure. But if you notice, the balances owing are

1 different on there as far as the dollar amounts.

2 Q. Right. And this one also says EFX 01; is that right?

3 A. Correct.

4 Q. What does the TRU in parentheses mean?

5 A. That I'm not sure.

6 Q. So other than this tri-merge report, was there ever a
7 formal solely Equifax report run by One Community?

8 A. No, sir.

9 Q. So where it says here the foreclosure process started,
10 is this how One Community knew that Mr. Daugherty's credit
11 file was showing foreclosure?

12 A. Correct.

13 Q. And did you review any other documents that indicated
14 Mr. Daugherty's credit file was showing a foreclosure?

15 A. No, sir.

16 Q. And, so, is it fair to say that the only way One
17 Community knew that Equifax was reporting a foreclosure is
18 just by this tri-merge report?

19 A. Correct.

20 Q. Now, I'd like to just -- if we keep turning a couple
21 pages, I believe it's actually the last, the last three
22 pages here, this looks to be another credit report. It
23 looks like a TransUnion credit report. Just let me know
24 when you're there.

25 A. Okay.

1 Q. And the inquiry date here is May 21st, 2015, as well;
2 is that right?

3 A. Yes, sir.

4 Q. Do you know what the date means? What's the
5 significance of that date?

6 A. That's when the credit report would have been pulled.

7 Q. So this credit report wasn't pulled until May 21st,
8 2015?

9 A. Correct.

10 Q. And do you recall why this particular credit report was
11 pulled?

12 A. I think this had to do with the consumer loan that
13 Mr. Daugherty applied for in regards to his van repairs.

14 Q. So is it your understanding that this TransUnion report
15 was irrelevant with regard to the refinance of the mortgage
16 loan? Is that right?

17 A. That's correct.

18 Q. And as we discussed, the inquiry date here, 5-21-15,
19 and just going back to that tri-merge report, we discussed
20 the date completed 5-21-15 as well?

21 A. Right.

22 Q. Is it possible that both of these reports were run on
23 the same day?

24 A. It's possible, but I wouldn't see why. But, again, I
25 wasn't in with the initial interview with Mr. Daugherty or

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1 the refinance of his mortgage or his inquiry on the consumer
2 loan.

3 Q. And, so, this consumer loan that we're talking about is
4 for the vehicle; correct?

5 A. Correct.

6 Q. And under the report date here it says 7-22, 2014. Is
7 it possible that could have been the date that the credit
8 report was pulled?

9 A. It's possible. But more than likely, it was probably
10 May 21 of 2015.

11 Q. Well, going back to those computer notes that we've
12 previously discussed, I know these notes were regarding the
13 consumer loan, the car loan. And those notes were dated
14 July 23rd, 2014, which is the day after this credit report
15 date is dated.

16 A. Uh-huh.

17 Q. Is it possible that this report was run with regard to
18 the consumer loan in July of 2014?

19 A. Yes.

20 Q. In going through this TransUnion report, you would
21 agree that there's no mention of a foreclosure on this
22 report; correct?

23 A. No mention of a foreclosure on this one.

24 Q. I know we had talked earlier about how -- because you
25 saw the foreclosure in the tri-merge report, the application

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1 process ended there; correct?

2 A. Yes, sir.

3 Q. Was there ever any formal denial letter that was sent
4 to Mr. Daugherty?

5 A. I'm not so sure if there was one or not. I'd have to
6 check with Debbie Lee and see. Generally, there's an
7 adverse -- what we call an adverse action that's sent.

8 Q. Sure. I just have a few more questions for you. I
9 appreciate your patience.

10 A. No problem.

11 Q. I'd like to turn to some notes. Mr. Napier, are you
12 familiar with these notes?

13 A. Yes, sir.

14 Q. And who were those notes created by?

15 A. They were created by me.

16 Q. Is that your signature at the bottom of this page?

17 A. Yes, sir, it is.

18 Q. And the notes say, the notes say it looks like it was
19 dated June 5th, 2015; correct?

20 A. Correct.

21 Q. And it says -- looks like it says, "Dave gave me
22 permission to talk to Jed concerning any of his accounts. I
23 gave Dave a copy of this packet and informed him he needed,
24 if he needed anything to let us know." Is that correct?

25 A. Correct.

1 Q. Did you ever speak directly with Mr. Daugherty's
2 attorney?

3 A. Yes.

4 Q. And what was the nature of that conversation?

5 A. He just basically was filling me in on what was going
6 on as far as Mr. Daugherty's complaint.

7 Q. And how many times would you say that you had met with
8 Mr. Daugherty's attorney?

9 A. I think I only talked to him once on the phone.

10 Q. And during the conversation when you talked about the
11 basis of the complaint, did you talk about anything else?

12 A. No, not really.

13 Q. And did you tell Mr. Daugherty's attorney that he was
14 denied a refinance loan?

15 A. Yes, I did.

16 Q. And did you tell him that the formal application was
17 never completed because the tradelines or the tri-merge
18 report showed a foreclosure?

19 A. I don't remember if I told him that or not. I just
20 know that once we saw the foreclosure, we would have stopped
21 the process.

22 Q. Do you recall if you ever told him about the TransUnion
23 report not showing a foreclosure on it?

24 A. I don't recall.

25 Q. Did you speak with Mr. Daugherty's attorney regarding

1 anything that we've not previously discussed?

2 A. Not that I'm aware of.

3 Q. And did you seek assistance from anyone outside of One
4 Community when reviewing or working on Mr. Daugherty's
5 credit file?

6 A. No, we did not.

7 Q. Okay. And is there anything you talked about with
8 Mr. Daugherty or his attorney that we've not discussed here
9 today?

10 A. Not I'm aware of.

11 Q. Okay. That's all the questions I have for you, Mr.
12 Napier. All right, sir. I'll turn you over to Jed."

13 CROSS EXAMINATION

14 BY MR. NOLAN:

15 Q. "Hello, Mr. Napier. Thanks for meeting with us today.

16 A. No problem.

17 Q. I just have a couple questions. You denied
18 Mr. Daugherty's mortgage loan application because of
19 foreclosure; correct?

20 A. Yes, sir.

21 Q. Now, when you pulled his consumer credit report from
22 TransUnion, there was no foreclosure; correct?

23 A. Correct.

24 Q. But the TransUnion file did have other adverse
25 tradelines; correct?

1 A. Yes, sir.

2 Q. Such as tax liens and medical bills; is that correct?

3 A. Yes, sir.

4 Q. And despite those other negative tradelines on his
5 credit report, you still extended a loan to Mr. Daugherty;
6 is that correct?

7 A. Yes, we did.

8 Q. Had there been a foreclosure on the TransUnion report,
9 would you have extended him a loan on the consumer
10 application?

11 A. Repeat that again, please.

12 Q. Sorry. If the foreclosure had appeared on his
13 TransUnion credit report during his consumer loan
14 application, would you have granted his application?

15 A. For a consumer loan? Probably not.

16 Q. Once One Community saw the foreclosure notation on the
17 tri-merge application, they immediately denied his
18 application; correct?

19 A. Correct.

20 Q. I don't have anything further."

21 REDIRECT EXAMINATION

22 BY MR. KENNEY:

23 Q. "Mr. Napier, I have a few follow-up questions. We
24 discussed earlier that the processes for applying for a
25 consumer loan are different than the processes for applying

1 for a mortgage loan; correct?

2 A. Correct.

3 Q. And it's fair to say that the process for applying for
4 a mortgage loan is a bit more strict than applying for a
5 consumer loan of lesser value?

6 A. Yes, that's a fair assessment.

7 Q. And you had previously said that had the foreclosure
8 appeared on Mr. Daugherty's TransUnion report, you would
9 likely have denied him the consumer loan; is that right?

10 A. Correct.

11 Q. Is it fair to say that despite the fact that the
12 foreclosure was not appearing on the TransUnion report, you
13 knew that there was a foreclosure appearing on his Equifax
14 report, or at least on a tri-merge report at the time this
15 loan was granted?

16 A. Yes.

17 Q. So despite the fact that you knew that there was a
18 foreclosure report appearing on his credit report, One
19 Community still offered the loan to him simply because the
20 foreclosure didn't appear on the TransUnion report?

21 A. No. Chances are if we had pulled only a TransUnion
22 credit report, we would not have known. But for
23 conversation sake, if the foreclosure was on the TransUnion
24 report and he had applied for a consumer loan, we would --
25 excuse me -- he would have been denied.

1 Q. So before the TransUnion report was run, One Community
2 knew that a foreclosure was appearing on the tri-merge
3 report; correct?

4 A. Correct.

5 Q. So One Community knew that the foreclosure was
6 appearing but offered the loan for the -- the consumer loan
7 because it didn't show up on the TransUnion report, on the
8 TransUnion report? Is that right?

9 A. That, that and circumstances.

10 Q. And what circumstances are those?

11 A. That he was trying to dispute that on his credit
12 report.

13 Q. Okay. I don't think I have any further questions for
14 you.

15 A. Okay. Thank you."

16 MR. NOLAN: I'm sorry. It will be quick.

17 RECROSS EXAMINATION

18 BY MR. NOLAN:

19 Q. "You testified that the foreclosure was a stop sign, so
20 to speak, on his credit application; correct?

21 A. Repeat that again. What was the sign?

22 Q. A stop sign.

23 A. Yes, yes.

24 Q. Is a tax lien a stop sign on a mortgage application?

25 A. Not always.

1 Q. And were other negative tradelines a stop sign on a
2 mortgage application?

3 A. Not in every circumstance, no.

4 Q. That's all I have."

5 RE-REDIRECT EXAMINATION

6 BY MR. KENNEY:

7 Q. "And I'll just follow up with one last thing. You said
8 not always. But it is possible that the tax liens could be
9 a stop sign on a mortgage application; is that correct?

10 A. Yes, sir.

11 Q. Again, it's going to have to be looked at on an
12 individual basis?

13 A. Sure, sure.

14 Q. If it's a small tax lien or a large tax lien, you know.

15 A. Sure.

16 Q. That's all the questions I have."

17 THE COURT: You may step down, Mr. Broadwater.

18 MR. NOLAN: Your Honor, at this time I'd like to
19 move the admission of the tri-merge credit report that was
20 discussed in that deposition.

21 THE COURT: Any objection?

22 MR. MANNING: Yes, Judge. It's a hearsay
23 document. There was no foundation laid for it.

24 THE COURT: All right. Response to the hearsay
25 objection, counsel?

1 MR. NOLAN: It was reviewed and testified to as
2 being the report that Mr. Napier observed. It's being
3 offered for the effect on the listener, why Mr. Napier
4 observed that he was denied the loan. It's not being
5 offered for the truth that Mr. Daugherty was in foreclosure,
6 that Equifax was reporting that. It's being offered to show
7 that when Mr. Napier reviewed these documents, he made a
8 decision based on these documents.

9 THE COURT: All right.

10 Mr. Manning, anything further?

11 MR. MANNING: There was no testimony as to the
12 reliability or the accuracy of the report also, Judge. It's
13 just not sufficiently reliable.

14 THE COURT: All right. Well, I'm going to admit
15 it for the limited purpose of the impact it had on him, but
16 not for any other purpose, counsel, given that there was no
17 further testimony or foundation for the admissibility of the
18 document.

19 I do believe, however, and I find that if it's
20 something that he reviewed in connection with the
21 allegations in this case that it can come in to show what,
22 if any, impact it had on him, --

23 MR. NOLAN: Yes, Your Honor.

24 THE COURT: -- preserving Ocwen's objection and
25 exception, Mr. Manning.

1 MR. MANNING: Thank you, Judge.

2 THE COURT: Call your next witness, counsel.

3 MR. NOLAN: Your Honor, the plaintiff calls Evan
4 Hendricks.

5 THE COURT: Sir, would you come up and take an
6 oath or affirmation, please.

7 **EVAN HENDRICKS**, PLAINTIFF'S WITNESS, SWORN

8 MR. MANNING: Your Honor, before we start while
9 he's getting some water could we have a brief sidebar on
10 this?

11 THE COURT: Yes, sir.

12 (Bench conference on the record)

13 THE COURT: Mr. Manning.

14 MR. MANNING: This is the issue that I raised at
15 the beginning of the trial regarding the scope of the
16 expert. And, obviously, I don't know what questions he's
17 going to ask, but it's difficult to unring the bell.

18 And to the extent he's going to go beyond the scope of
19 his report, I don't know that an instruction to the jury
20 cures it. I know Your Honor has already ruled you're
21 limited to the 26(a)(2) and Mr. Young in the beginning said
22 they weren't going to go beyond it. But we had his 26(a)(2)
23 back in April. It wasn't supplemented. The rules are real
24 clear. And I didn't want to be in a situation where we had
25 to do this and interrupt the witness.

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1 MR. NOLAN: Your Honor, the events he testified to
2 are in his report and we plan to examine him on the basis of
3 his opinions. He had certain documents available to him at
4 that time and we're going to review those documents. He
5 testified about credit reporting in general which is the
6 basis of his expertise. That's what we're going to examine
7 him on today.

8 THE COURT: Okay. If there are objections, let me
9 know and I'll handle this as we go, Mr. Manning.

10 MR. MANNING: Thank you, Judge.

11 MR. NOLAN: Is there anything specific I can be
12 aware of?

13 MR. MANNING: Well, the same thing that I
14 addressed in the opening. There's no opinions here
15 regarding causation or damages. Further, there's no
16 evidence that he has ever reviewed or seen any of Ocwen's
17 training procedures and policies. As a result, he can't
18 talk about any of those things.

19 THE COURT: I'll take objections as I hear them,
20 gentlemen.

21 (Bench conference concluded)

22 DIRECT EXAMINATION

23 BY MR. NOLAN:

24 Q. Mr. Hendricks, could you please introduce yourself to
25 the jury?

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1 A. Hi. My name is Evan Hendricks. I'm the owner of a
2 small company called Privacy Times, Inc.

3 Q. What is Privacy Times?

4 A. Privacy Times most of its life was a publishing
5 company. I published a newsletter called *Privacy Times*
6 which was a specialized newsletter that I started back in
7 1981 which covered lots of privacy laws including the Fair
8 Credit Reporting Act. And I published it for 33 years and
9 closed it down in December, 2013.

10 And for the last 15 years, I was doing two jobs. I was
11 doing that and also doing expert witness work. And I've
12 also done consulting for government agencies and other
13 private companies.

14 Q. Now, let's unpack that a little bit. So you say you
15 served as an expert previously?

16 A. Yes. I served as an expert witness many times in many
17 cases and testified in trials and had my deposition taken.

18 Q. And how has serving as an expert helped provide you
19 with specialized knowledge?

20 A. Yeah. That's -- I'm the kind of an expert that's a
21 specialized knowledge expert. And if you get -- if you're
22 an expert witness, you get access to all the documents in
23 the case.

24 And in the credit reporting cases, all these documents
25 and all these policies and their practices, it's not public

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1 information. You can't go on the internet and find it.
2 Sometimes you only get to see it because you live under a
3 protective order.

4 But that way, you get access to all the information of
5 the credit bureaus and the big creditors and all the
6 entities that furnish information. And, so, I've had an
7 opportunity through the years to look at all those
8 practices, policies, and procedures.

9 Q. So you mentioned also that you had worked with
10 Congress.

11 A. Yeah. I've testified before Congress about 10 times,
12 always by invitation, usually on credit reporting related
13 issues but sometimes on the privacy of other types of
14 personal information.

15 Q. When did your involvement first begin?

16 A. Well, in the -- the first law that was ever passed --
17 privacy law that was passed in the U.S. was the Fair Credit
18 Reporting Act. And that was way back in 1970 even before I
19 started.

20 But by the 19 -- by the early 1990s, it became a very
21 big news issue which I covered in my newsletter about
22 problems people are having with the accuracy of credit
23 reports.

24 And, so, all that interest got Congress to revisit the
25 law. And they had hearings and they amended the law. And

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1 what was really significant there, until that time there
2 were no responsibilities on the creditors to make sure that
3 they reported accurately and they investigated disputes.

4 So that was the first time that they did that. And I
5 was involved with the whole process of working with the
6 groups that worked with Congress to see how that law would
7 be shaped.

8 Q. And when was that?

9 A. That was in 1996.

10 Q. Okay. Did you continue to work with Congress after
11 that?

12 A. Yes. I would -- I would do dual roles. I would
13 monitor, report on stories. But sometimes I'd be asked to
14 testify before the committees if they had certain subject
15 matters that they're interested in.

16 And then seven years after that 1996, Congress spent
17 another whole year amending the act to try and strengthen it
18 more for consumers. And that's when they also strengthened
19 the, the responsibilities of the creditors and furnishers to
20 make sure that they investigated disputes when their
21 consumers were disputing information.

22 Q. Did you continue to track the development of that law?

23 A. Yeah. It's always been -- because credit report data
24 is so important, I mean, I wrote my book, *Credit Scores and*
25 *Credit Reports*, around this time in 2003-2004. And there

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1 was just always a lot of interest because of the importance
2 of credit report data.

3 And, and you've heard about the CFPB, the Consumer
4 Financial Protection Board. There's other institutions that
5 have oversight or enforcement responsibilities. And in 2004
6 there was issued what I considered extremely important
7 notice to all the creditors that if they got a dispute from
8 a credit bureau like Equifax that they had to do a good
9 enough investigation; that they had to do a searching
10 inquiry, something with enough care to it to find out what
11 the problem was. And it wasn't enough to just do some
12 superficial response.

13 So that was sort of a real important form of notice to
14 the industry.

15 Q. And when was that?

16 A. 2004.

17 Q. So over 10 years ago?

18 A. Uh-huh.

19 Q. Have you had any media appearances in your time?

20 A. I'm sorry?

21 Q. Media appearances.

22 A. Yeah. I got to be on all the cable channels like CNN
23 and FOX and CNBC. I was interviewed in the newspapers like
24 the *Wall Street Journal* and the *New York Times*. And I also
25 got to be on the *Oprah Winfrey* show once.

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1 MR. NOLAN: Your Honor, at this time I'd like to
2 move to qualify Mr. Hendricks as an expert under the FCRA.

3 THE COURT: Any objection, Mr. Manning?

4 MR. MANNING: May I ask a question that goes to
5 qualifications?

6 THE COURT: Any objection?

7 MR. NOLAN: No, Your Honor.

8 THE COURT: Just a second. No objection to the
9 question?

10 MR. NOLAN: That's correct, no objection, Your
11 Honor.

12 THE COURT: All right. Go ahead, please.

13 VOIR DIRE EXAMINATION

14 BY MR. MANNING:

15 Q. Mr. Hendricks, have you ever worked at Equifax?

16 A. No.

17 Q. Have you ever worked at TransUnion?

18 A. No.

19 Q. Have you ever worked at Experian?

20 A. I was on the Consumer Advisory Council for Experian,
21 yes.

22 Q. Were you an employee?

23 A. I was -- no, I was invited as an expert to serve on
24 their Consumer Advisory Council. It was a paid position,
25 yes.

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1 Q. So you haven't actually worked as an employee for any
2 of the credit bureaus?

3 A. No, not a full-time employee, no.

4 Q. And, so, although you have some experience in the
5 industry, you've never actually worked for any of the credit
6 bureaus?

7 A. That's correct.

8 MR. MANNING: Your Honor, I would object to this
9 witness being offered as an expert. He has no first-hand
10 knowledge of this industry having worked at none of the
11 credit bureaus.

12 THE COURT: Any response you want to give,
13 Mr. Nolan?

14 MR. NOLAN: Yes, Your Honor.

15 Mr. Hendricks just testified that he worked with
16 Experian on their board. He's worked directly with Congress
17 who's the body that created this law. The fact that he
18 hasn't worked inside the industry is neither here nor there
19 on whether he has experience and whether he has relevant
20 testimony that can be helpful to the trier of fact in this
21 matter which is the standard for an expert.

22 THE COURT: All right. Listening to the
23 testimony, this witness has indicated that for many years he
24 published a specialized newsletter on privacy matters,
25 including those related to credit reporting. He's served as

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1 an expert many times.

2 He has specialized knowledge that he has garnered as a
3 result of working in the field. He was involved in 1996
4 with groups that worked with Congress on how the law should
5 be shaped. And then, as I understand it, he was involved
6 again in 2003 when Congress took on the effort to amend the
7 statute. He has written a book regarding credit scores and
8 credit reports.

9 I find that he has experience, related experience,
10 counsel, and that he should be allowed to give expert
11 testimony in the field related to this case. I find that
12 that testimony could be helpful to the jury in determining
13 the issues in this case.

14 And, so, for those reasons, I overrule the objection,
15 preserving the objection and exception of the defendant
16 Ocwen.

17 MR. MANNING: Thank you, Judge.

18 THE COURT: I specifically find that in order for
19 him to have specialized knowledge that's useful to the jury,
20 it is not necessary that he have first-hand experience with
21 working with one of the credit reporting agencies.

22 Go ahead, please.

23 MR. NOLAN: Thank you, Your Honor.

24 BY MR. NOLAN:

25 Q. So let's start with some basics. How does a furnisher

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1 provide or furnish information to a credit reporting agency?

2 A. There are three main ways that a creditor/furnisher
3 furnishes information.

4 One -- you've heard about all three of them. One is
5 the, the monthly reporting that they do. Every month they
6 tape about their customers or they do it through a pipeline.

7 The second way is through that form that's called the
8 AUD, the Automated Universal Data form. That's if they're
9 sending in -- the creditor gets a call from a customer and
10 says, "Well, we can send in this correction. If the
11 customer's right, we'll send in the correction."

12 And the third one which you've heard a lot about and
13 you're going to continue to hear about is the ACDV. That's
14 the third type of form or way that the furnisher will
15 furnish information to a credit bureau like Equifax.

16 Q. And let's back up. Can you define the term "furnish"
17 just so we're all clear?

18 A. Yeah. "Furnish" just means that they're reporting the
19 information. They're giving it. They're communicating it.
20 I think we could go on. There's probably a long list of
21 synonyms.

22 Q. And can you tell us how does a derogatory or negative
23 tradeline affect a consumer?

24 A. There's two ways that derogatory data can harm a
25 consumer's creditworthiness. The first way is it can lower

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1 their credit score. But that's really not the main issue in
2 this case.

3 It's the second way that's most relevant here, and
4 that's that a tradeline can have a certain derogatory nature
5 to it like a foreclosure. And there are underwriters that
6 will scan the credit report for key derogatory terms, and
7 "foreclosure" is one of them.

8 So it serves, as you heard, a stop sign. I like to
9 call it a scarlet letter. And that's why that in this case
10 Mr. Napier said while it could give him -- even though he
11 had problems on his credit report with TransUnion, they
12 would give him a loan because there was no scarlet letter on
13 there. There was no foreclosure.

14 But with the Equifax -- when -- in a mortgage they pull
15 all three. So one scarlet letter on one credit report
16 becomes the stop sign. And that's -- so the second way, the
17 scarlet letter, is the way --

18 MR. MANNING: Judge, I need to object here. This
19 is outside the scope of the report.

20 THE COURT: Response?

21 MR. NOLAN: This is the basis of credit scoring.

22 THE COURT: Response to the objection?

23 MR. NOLAN: This is contained directly in his
24 report. He has a section on how credit affects consumers
25 and credit scoring.

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1 THE COURT: And your specific objection to what he
2 stated, Mr. Manning?

3 MR. MANNING: Yes, Judge. There are -- there's a
4 report that he's offered and that report doesn't say
5 anything that includes his last answer. It should be
6 stricken from the record.

7 THE COURT: Well, give me specifically what it is
8 about his last answer that you're objecting to.

9 MR. MANNING: His application of this general
10 concept to the facts of this case. He has not offered any
11 opinion about the facts of this case as per his last answer.
12 And I can show you the report.

13 THE COURT: I would like to have a copy of the
14 report. I don't need you all. I just need the report. You
15 both have the same report. Right?

16 MR. MANNING: It's on Page 6.

17 THE COURT: All right. Thank you.

18 (Pause)

19 THE COURT: Counsel, I have reviewed the portion
20 of the report that you all have directed me to, as well as
21 reviewing the witness's last answer.

22 I find that there is no opinion given in this last
23 answer, the best that I can read it, Mr. Manning, that's
24 inconsistent with what I see here. It appears to me to be a
25 general discussion about credit reporting.

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1 And, so, for that reason, I overrule the objection,
2 preserving Ocwen's objection and exception.

3 MR. MANNING: Your Honor, if I may have a brief
4 sidebar just to clarify --

5 THE COURT: No, sir.

6 MR. MANNING: May I just state it in open court?

7 THE COURT: No. I will let you address the record
8 at a break, though, Mr. Manning.

9 MR. MANNING: Thank you, Judge.

10 THE COURT: Yes, sir.

11 BY MR. NOLAN:

12 Q. Mr. Hendricks, what documents did you, were you able to
13 review when you were preparing your report?

14 A. Well, the documents that were available at the time
15 which basically were produced by the plaintiff or by
16 Equifax. To my recollection, at that point in time
17 defendant Ocwen had not disclosed the documents that were, I
18 guess, asked for or demanded in discovery at that point.

19 Q. Let me draw your attention to the monitor. Have you
20 seen this document before?

21 A. Yes.

22 Q. Can you describe what this document is?

23 A. How do I focus this?

24 Q. I'll work on that.

25 MR. NOLAN: Actually, Your Honor, I'd like to

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1 publish this. This is Plaintiff's Exhibit Number 11.

2 THE COURT: It's previously been admitted and can
3 be published at your discretion.

4 MR. MANNING: Objection, Judge. This isn't in the
5 report.

6 THE COURT: I'm sorry?

7 MR. MANNING: This document is not identified by
8 this witness in his report.

9 THE COURT: All right. I overrule the objection
10 until I see where we're going, Mr. Manning. The fact that
11 he wants to show him the document is not objectionable.

12 THE WITNESS: Okay. We talked about ACDVs. And
13 this is an ACDV that shows on March 19th, 2013, --

14 BY MR. NOLAN:

15 Q. Would you like me to take it section by section and we
16 can --

17 A. Yes.

18 Q. -- zoom in a little bit better. Beginning at the top
19 left --

20 MR. YOUNG: We can give the witness a hard copy.

21 THE WITNESS: Thank you. Okay.

22 BY MR. NOLAN:

23 Q. So what information is contained in the top left block?

24 A. Well, the top left has -- the first line is the control
25 number that you heard about. And then it says the

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1 originating CRA, which means consumer reporting agency.
2 That's EFX for Equifax. Date created, March 19th, 2013.
3 Next is the subscriber code which is Ocwen's subscriber code
4 with Equifax.

5 Below that is the account number that you've heard a
6 lot about. And then the grantor's name means credit
7 grantor's name is Ocwen Loan Servicing. The responder's
8 name is Harish Rao. And it has a phone number for him.

9 And then the box before, right below that it says --
10 there's a box that says "verified as reported." And that's
11 the one that's checked.

12 That's the way that this captures what Equifax sent to
13 Ocwen and what Ocwen returned back, what it furnished back
14 to Equifax.

15 Q. That's what I'd like to ask you.

16 A. Okay.

17 Q. Specifically identify which portions of this box were
18 placed by Equifax and which portions of this box were placed
19 by Ocwen.

20 A. Okay. The --

21 THE COURT: Just a second. There's an objection.

22 Mr. Manning, go ahead.

23 MR. MANNING: Judge, again, the expert has to
24 disclose his opinions and what he relies on prior to trial.
25 This was not disclosed. It's improper.

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1 THE COURT: Response to the objection, counsel?

2 MR. NOLAN: Your Honor, in the expert report he
3 cited these documents, similar documents to this one as
4 well. He reviewed all of these and he's going to -- we're
5 trying to get to the basis of his opinion by illustrating
6 how he arrived at the opinion. Before blurting out his
7 opinion, we want to demonstrate how he arrived at that
8 place. And these documents are instructive as to how he
9 arrived there.

10 THE COURT: Are you indicating that he reviewed
11 these documents in formulating the opinions which he's going
12 to give here today?

13 MR. NOLAN: That's correct, Your Honor.

14 THE COURT: Mr. Manning.

15 MR. MANNING: If Mr. Nolan could show me where
16 they're identified in the report, then maybe I won't have an
17 objection.

18 MR. NOLAN: Your Honor, on Page 2 he indicates
19 specific documents. Page 30 is not one of these specifics,
20 but it's in the page ranges. It's in the documents he did
21 review.

22 THE COURT: What types of documents are included,
23 gentlemen, in what he indicates that he's reviewed?

24 MR. NOLAN: Plaintiff's Exhibit Number 12 was
25 specifically referenced, as well as Plaintiff's Exhibit

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1 Number 13 which are all of the ACDVs that Mr. Young
2 published to the jury previously as exemplars of the
3 documents he reviewed to arrive at his ultimate conclusion
4 on Page 2 of his report.

5 THE COURT: All right.

6 And your objection, Mr. Manning, as I understand it, is
7 that there's nothing no indicate that he reviewed this
8 specific document. Is that correct?

9 MR. MANNING: Or he's already gone beyond even the
10 documents that he did identify as to what he was identifying
11 on them. He's gone beyond -- not only this document is not
12 part of it, but also what he said about it is already past
13 what he disclosed in his report.

14 THE COURT: All right. Let me, counsel, ask this
15 witness a question. And I want a copy of the report,
16 please, while I'm doing that.

17 All right. You have before you Plaintiff's Exhibit
18 Number what, sir?

19 THE WITNESS: This is Exhibit Number 11.

20 THE COURT: All right. And the nature of that
21 Exhibit, is it an ACDV?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: And is this document something that
24 you reviewed in order to formulate your opinions that are
25 reflected in this report or not?

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1 THE WITNESS: Yes, it was something I -- I
2 reviewed the Bates stamped documents that were available at
3 that time, yes.

4 THE COURT: All right. And was this one of those
5 documents or not?

6 THE WITNESS: Yes, it was.

7 THE COURT: And there is an objection on the floor
8 that that is not stated specifically in your report. Is
9 that correct, sir?

10 THE WITNESS: I think the specific pages I cite to
11 are different ACDVs. I think that's on Page 2 if I remember
12 correctly. But in the -- near the back there should be a
13 "materials considered" section. And I, I recollect putting
14 in that that I reviewed the Bates stamped documents that had
15 been produced by defendant at that, at that point.

16 THE COURT: All right. Before I rule on this, I
17 want you all to hand him a hard copy of this document. Go
18 to that portion where he indicates what he reviewed in order
19 to formulate his opinions so that I can rule on this matter.

20 THE WITNESS: Let me start on Page 2. Okay.
21 Thank you. Okay.

22 I guess the specific side I think you want me to
23 address that first. On -- I mentioned for instance -- I
24 said -- on Page 2 I said in a parentheses when I was stating
25 an opinion, I said, "See, for instance, comma, EIS dash

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1 Daugherty 4060, 60 through 63, and EIS Daugherty 89 through
2 95." That's on Page 2.

3 And then if you go to the Page 32, "materials
4 considered," the last item listed is Bates stamped documents
5 produced by defendant Equifax.

6 THE COURT: All right. Anything further?

7 MR. MANNING: Yes, Judge. The witness has
8 accurately identified the specific Bates numbers that he's
9 referenced. And I don't have an objection as to him talking
10 about those.

11 Beyond that, Judge, it's not disclosed and there's no
12 reference as to what the Bates stamped documents produced by
13 Equifax at that time were. That's it.

14 THE COURT: Is it your position, Mr. Manning, that
15 you do not have those Bates stamped numbers?

16 MR. MANNING: No, Judge. My position is they're
17 not identified in his report as to what he had available to
18 him at that time.

19 THE COURT: All right. I overrule the objection,
20 counsel. If this document is one of those Bates stamped
21 numbers, then I don't think that there's any basis for the
22 objection.

23 MR. NOLAN: Yes, Your Honor.

24 THE COURT: The witness has indicated that he
25 reviewed this particular document. And, as I understand it,

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1 it's referred to in the latter portion of his report where
2 he indicates the Bates numbers of the documents to which he
3 reviewed when he issued his report.

4 MR. NOLAN: That's correct, Your Honor.

5 MR. MANNING: It's not. The last page, Page 32 of
6 the report, Judge, there is not a reference to Bates
7 numbers.

8 THE COURT: What page number is it?

9 THE WITNESS: It's 32.

10 THE COURT: All right. Well, it's in black and
11 white, counsel. Either it's there or it isn't. You all are
12 looking at the same page. And, again, I do not have it in
13 front of me. If you want to show counsel --

14 MR. MANNING: I have a copy, Judge. I'm looking
15 at Page 32, and I'll quote, "Bates stamped documents
16 produced by defendant Equifax."

17 THE COURT: All right.

18 MR. MANNING: It has no range. There's no
19 indication as to what he had available at that time. We
20 weren't told about it. It's not properly disclosed.

21 THE COURT: All right. I overrule the objection,
22 preserving Ocwen's objection and exception. Let's go
23 forward.

24 MR. MANNING: Thank you, Judge.

25 THE COURT: And to save us time, I will preserve

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1 an objection for Ocwen to similar objections regarding the
2 specific document not being laid out on that last page, or
3 Page 32, as we go forward if he makes reference to documents
4 that are not specifically laid out of which he indicates he
5 had reviewed in order to formulate his opinion.

6 MR. NOLAN: Yes, Your Honor.

7 BY MR. NOLAN:

8 Q. So, Mr. Hendricks, can you indicate the portion of the
9 information that comes from Ocwen versus the portion of the
10 information that comes from Equifax in the box in the top
11 left corner?

12 A. Just in the top left corner?

13 Q. For now.

14 A. Okay, yeah. The information that comes from Equifax is
15 pretty much the first five lines up through probably through
16 the date created and the response due date. And then the
17 subscriber code either is sort of pre-printed in there --
18 not printed because it's electronic -- or it's provided by
19 Ocwen, as well as the name Ocwen Loan Servicing. Either
20 that's going to be pre-populated or provided by Ocwen. And
21 then the responder's name, Mr. Harish Rao, if it's -- is
22 going to be responded by -- provided by Ocwen. And the
23 verified report is provided by Ocwen. That's the key.

24 Q. So look at the top left for a moment. What's contained
25 in this section of the document? Top right.

1 A. Oh, the top right. Okay. The top right has the two
2 dispute codes you've heard about. You have dispute code 001
3 which stands for not his or hers; and dispute code two which
4 is a very broad dispute code for just about everything that
5 has to do with the account.

6 So we call that -- we call it the 007 code because you
7 have to be like a really good diligent agent to investigate
8 all these factors that could be wrong with the, with the
9 account.

10 Q. So the next section of the document under the "reported
11 consumer identity" field, can you describe what goes in
12 there?

13 A. Right. On the left side you have an Equifax
14 pre-populated -- they take the information from the
15 consumer's file and they say this is what we have with the
16 consumer's name, address, social, date of birth, and
17 sometimes phone number.

18 So Equifax is saying, showing to Ocwen this is what we
19 have on him. And that left side is coming from Equifax
20 showing what's in the Equifax file. That's the purpose of
21 these ACDVs for Equifax to show Ocwen this is what we have
22 on this customer of yours.

23 Q. So on the right-hand side of that column, what goes
24 there?

25 A. The right-hand side is Ocwen's response saying they

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1 have the same -- see, there's a box that says "same" and
2 that's checked. They have -- Daugherty David is the same.
3 They didn't check the same address but they had the street
4 address pretty much as very similar. And -- but they had
5 the same Social Security number, so they checked that. And
6 they checked the same phone number.

7 Q. Okay. And as we move down to the file here, describe
8 this section of the form for us.

9 A. This is -- as you get down, this is all the, all the
10 particulars about the tradeline. And you can see the
11 different boxes. They're somewhat self-explanatory,
12 including the date of first delinquency, the high credit,
13 the date open.

14 If you go below, importantly, it says "past due." And
15 that's where you hear that \$6,128 past due. And then if you
16 keep going down further, you'll see the special comment code
17 "foreclosure proceedings started."

18 Q. Don't get ahead of me here.

19 A. Okay. I'm sorry.

20 Q. What, what's the special comment code?

21 A. The special comment code is to show something that's,
22 something that's going on that's relevant so that, you know,
23 it's, it's important enough that they have a special comment
24 for. And it's recent enough and active enough that it needs
25 to be included on this at this point in time.

1 Q. So would Ocwen have the opportunity upon receipt of
2 this to make any changes to this form?

3 A. Yeah. That's the -- the whole, the whole purpose of
4 this is so Ocwen can see from Equifax this is what's showing
5 in the Equifax file for Mr. Daugherty. And you see where it
6 says "verified as reported." You have the option of "modify
7 as shown" or "delete account."

8 So that those are other options that they had. They
9 can modify it and fill in something new to replace what's
10 here or they can instruct Equifax to delete it.

11 Q. And I want to move ahead on Exhibit Number 1 to the
12 third page if you would.

13 A. Did you say Exhibit 1 or 11?

14 Q. Or Exhibit 11. I apologize. The third page of that
15 document.

16 A. Okay. This is Bates stamp 34?

17 Q. Yes, sir.

18 A. Okay.

19 Q. Is this another ACDV?

20 A. Yes. It's another ACDV for the same account number.
21 And it's on the same response date, which is March 20th,
22 2013. One of the -- it has a name of a different responder,
23 but it also has "verified as reported" checked.

24 Q. In this case, the responder's name was Raj Kumar?

25 A. Raj Kumar.

1 Q. So the same date you said?

2 A. Same date, same account number.

3 Q. And what was the result of the investigation?

4 A. Well, this is the account that shows current account.

5 Do we have it up there? Yeah. And if you jump all the way
6 to the bottom, it has the code 11 which means current
7 account and it has no past due amount.

8 So this is the one that's basically more of a positive
9 tradeline. It has some payment -- derogatories in the
10 payment history which is a very tiny box there. But it says
11 past -- payment history months 1 through 12 and payment
12 history months 13 through 24. And that's, that's where you
13 have those past delinquencies that you heard about.

14 But you have these two ACDVs on the same day with the
15 same account number.

16 Q. And how would you characterize the responses from
17 Ocwen?

18 A. Well, the responses from Ocwen were just like they,
19 they basically just checked the "verified as reported" box.
20 And they didn't seem to notice that these two ACDVs are
21 telling you together that for the same account number, we
22 have completely opposite data. One is current and one is
23 foreclosure.

24 So if you want to call this a duplicative notice, this
25 is notice that there were two tradelines with the same

1 account number and that, you know, it needed to require some
2 sort of special care to see that this shouldn't be. And
3 Equifax is asking Ocwen to investigate this and say, "Is
4 this right?"

5 Q. And, so, Ocwen is telling Equifax something with this
6 document?

7 A. Yes. Ocwen is telling Equifax by checking "verified as
8 reported" that all of this information is complete. And in
9 terms of how they responded, this is something that they did
10 just -- it didn't even take a minute. Just a matter of
11 seconds is how long they spent on each one of these.

12 Q. Now, you discussed previously the standard since 2004
13 has been a searching inquiry; correct?

14 A. Yeah. You have to do some sort of -- exercise enough
15 care so you can find out, diagnose what is the nature of the
16 dispute, what's this guy really disputing? And does it --
17 you know, is the dispute genuine? You know, whatever -- you
18 have to take some sort of logical, investigative step to
19 find out how the dispute should be handled.

20 Q. And what information should they be looking at?

21 A. Well, one thing that's standard in the industry is that
22 creditors regularly look at their customers' credit reports.
23 They can pull their customers' credit reports and see how is
24 our tradeline showing up on this customer's credit reports.
25 So that would be one way to do it.

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1 But clearly if they're getting, showing -- which is I
2 think one of the best steps they could have taken
3 considering they have the same account number and one is
4 very derogatory and one is basically pretty positive.

5 Q. Based on that standard, even looking at this ACDV
6 itself, do you have any opinion on their investigation of
7 just solely this ACDV?

8 A. Yeah. I think that they -- my opinion is that Ocwen
9 just disregarded all the red flags that were -- that you
10 should take together with these two ACDVs and disregarded
11 them and said just -- somebody just took a few seconds to
12 hit the, the "verified as reported" button and didn't truly
13 investigate it.

14 Q. Now, you also mentioned in your report something called
15 a disputed code. What is a dispute -- a code that's
16 disputed?

17 A. Right, a dispute code. When -- another standard,
18 industry standard is if the consumer disputes directly to a
19 furnisher like Ocwen about something, you know, in his
20 credit file, then Ocwen has a responsibility to mark it as
21 disputed by consumer. And there's a special code for it
22 under this standard called Metro 2. And the code is called
23 the XB code.

24 And, so, my recollection is that Mr. Daugherty did that
25 in March of 2013, more or less. And to my knowledge, I

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1 never saw Ocwen mark this derogatory tradeline with that XB
2 code showing it was disputed by consumer.

3 Q. Now, in your report you specifically reference
4 Plaintiff's Exhibit Number -- Plaintiff's Exhibit Number 2.
5 You referenced this specifically in your report; correct?

6 A. I think so, but I didn't have that exhibit number.

7 Q. Let's take a look here on the screen. Is this the
8 letter you're referencing with the direct dispute?

9 A. Oh, yes. This is the March 14th, 2013, direct dispute
10 from Mr. Daugherty to Ocwen Loan Services.

11 Q. So, again, when Ocwen receives a direct dispute, what
12 should they do?

13 A. They should -- when they -- from then on as they report
14 or furnish this tradeline to Equifax, they should mark it
15 with this XB code so it would show the language "disputed by
16 consumer" on his credit report.

17 And that XB code would show up in this thing called a
18 compliance condition code on Exhibit 11. You see that on
19 Exhibit 11. The special comment code has the B0 for
20 foreclosure proceedings started. And the compliance
21 condition code is right above that. That's where the XB
22 code should go.

23 Q. And what benefits does the XB code have again?

24 A. Well, the XB code mitigates the damage to the credit
25 score because the XB code means that the status is not going

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1 to be scored. And, so, on the derogatory account, the
2 status was 120 days past due.

3 So it would have basically neutralized that and would
4 not, and would not score the past due balance either. And
5 those are the two worst things about that tradeline.

6 So if -- you know, there are some people that if
7 they're trying to hurry up, like raise their credit score
8 quickly, a temporary fix is to try and do this "disputed by
9 consumer," do a direct dispute and see if you can get that
10 code.

11 I mean, it works in some ways, doesn't work in others.
12 But it does -- it is established that it does neutralize the
13 negative aspect of the credit score, tradeline and credit
14 score.

15 Q. Is an XB a cure-all? Would it hide the entire
16 tradeline?

17 A. No. And, like I said, the credit score is not the main
18 issue in this case. It just shows that there was not -- a
19 standard wasn't being followed. But it's still not -- like
20 the whole issue of a foreclosure, an XB code is not going to
21 do anything to ameliorate that. It's still going to harm
22 someone's creditworthiness to have that term on their credit
23 report.

24 Q. Okay. I want to move ahead. Now, in your review did
25 you see other instances of ACDVs similar to these two?

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1 A. Yes. They kept following the same pattern. There was
2 two ACDVs at the same time with the same account number.
3 One was very derogatory and, and damaging to Mr. Daugherty's
4 creditworthiness. The other one was mainly positive.

5 And they're all -- each one of them, each set of these
6 is telling -- Equifax telling Ocwen that this account number
7 has basically a Dr. Jekyll and Mr. Hyde nature to it. And,
8 and that all Ocwen did was take a few seconds, not even a
9 minute, to hit the "verified as reported" box and then send
10 it back to Equifax saying, "This information stays on
11 Mr. Daugherty's credit report," because the way the system
12 is, if Ocwen doesn't instruct Equifax to remove it, Equifax
13 is not going to remove it. That's, that's where they look
14 to when it comes to this kind of creditor information. They
15 rely on Ocwen to tell them is it, is it truly this
16 customer's or not.

17 Q. I'm going to hand you Plaintiff's Exhibit Number 12.

18 A. Thank you.

19 Q. Now, in your report you specifically identify this ACDV
20 form as one that you relied upon in general for the basis of
21 your opinion regarding the investigations; correct?

22 A. Yes.

23 Q. When did this -- when was this ACDV created?

24 A. Created on May 31st, 2013; both on the same day, two
25 ACDVs.

1 Q. When was it responded to?

2 A. On June 2nd, 2013, both of them.

3 Q. Now, what's the dispute in this ACDV?

4 A. This one is simply the 001 code which is not his/not
5 hers. And then it goes on to say "provide complete ID."

6 Q. So on -- for instance, on Bates Page 60 this is the
7 current account reporting; correct?

8 A. Yes.

9 Q. If we look ahead to Page 62 and, again, you said --
10 what is the date created?

11 A. May 31st, 2013.

12 Q. Same as the last one?

13 A. Yes.

14 Q. And the result, of course, you see at the top is
15 verified; correct?

16 A. Yes, verified as reported.

17 Q. And, now, we don't dispute that Mr. Daugherty had a
18 loan with Ocwen; correct?

19 A. Right. That seems very well established.

20 Q. Do you find it disingenuous for him to dispute this
21 account saying "not mine"?

22 A. No. In fact, the -- they only give you so many things
23 to choose from when you make your dispute. But the reality
24 is that this second derogatory account that was past due and
25 foreclosure proceedings starting, that was not his account.

1 It was -- so the dispute saying it's not his is true.

2 And the responsibility of Ocwen is to investigate to
3 say, "Well, he's saying it's not his. And we have to
4 investigate to find out, well, is it, is that correct?"

5 And, and they never even -- they just disregarded that
6 whole important factor.

7 Q. I also wanted to draw our attention to one more aspect
8 of this dispute. Let's go back to the first one on Page 60.
9 Both received the same day and both responded the same day;
10 correct?

11 A. Yes.

12 Q. And who was the investigator, the responder I should
13 say?

14 A. The responder on 60 was the same one this time. His
15 name is Daniel John.

16 Q. And then who investigated the ACDV on Page 62?

17 A. Daniel John.

18 Q. The same investigator on the same day verified two
19 accounts. One said he's in foreclosure. One said he's
20 current.

21 A. With the same account number.

22 Q. Is that a reasonable investigation?

23 A. No, that's, that's, that's so un-- that's just so
24 illogical that I can't find an excuse for, for doing
25 something like this.

1 Q. I want to jump ahead several disputes to Plaintiff's
2 Exhibit Number 18. I'll put that on the screen.

3 A. Okay.

4 Q. Can you read off that Bates stamp for us?

5 A. The Bates stamp on the first one is 274 and the other
6 one is EIS Daugherty 276.

7 Q. Are these documents you reviewed when preparing your
8 report?

9 A. Yes.

10 Q. So when was the date these were created?

11 A. April 1st, 2014, both of them.

12 Q. And who responded to these disputes?

13 A. This would be Robert Rajina on both of them.

14 Q. On both of them?

15 A. Yes.

16 Q. Okay. And now here we have a new wrinkle on the ACDVs.

17 A. Yes.

18 Q. All right. Can you identify what's new about this?

19 A. Well, as I said, there's boxes where you have options.
20 This one has the box checked "modify as shown." And, so,
21 then you drop down to see what have they modified. And --

22 Q. And where would the modifications appear on this form
23 because we haven't seen modifications yet?

24 A. How do they -- they have a second line before the
25 original line. So the top line is the original line and

1 then the line right below it shows what the changes are.

2 Q. So, for instance, an account status that was current
3 should be reporting as 11, and then they modified it to show
4 11?

5 A. Yeah. You mean to the bottom of -- are we at 274?

6 Q. Yes.

7 A. Yeah, that's right. On 274 they, they did -- yeah,
8 they basically modified it to show the same current status.

9 Q. I want to ask you to -- XR, what does that compliance
10 condition code mean?

11 A. That means they're removing whatever the previous
12 compliance condition code was.

13 Q. So if Mr. Daugherty had marked it as XB, this would
14 remove the marking as disputed?

15 A. Yes. There are different compliance condition codes.
16 But whatever it was, XR is removing the one that was there.

17 Q. So he would lose the slight protection the XB provided?

18 A. Right. And he never -- and it's also -- the XR means
19 they're removing a compliance condition code. They're doing
20 it in relation to the positive tradeline, and Mr. Daugherty
21 never disputed that. So that means that if they put an XB
22 code on, they put it on the wrong one which was the positive
23 one.

24 Q. Let's scroll ahead to Page 276 which is part of Exhibit
25 Number 18. Again, this was opened on April 1st just as the

1 last one was?

2 A. Yes.

3 Q. And who was the investigator on this one?

4 A. Robert Rajina. We're on 276; correct?

5 Q. That's correct, yes.

6 A. Robert Rajina.

7 Q. Again this tradeline was modified?

8 A. Yes.

9 Q. Ocwen took some steps in this specific investigation?

10 A. Yes.

11 Q. Was this sufficient to pass muster under a reasonable
12 investigation in your opinion?

13 A. I -- no, I don't think so because they're still leaving
14 the "foreclosure process started" which is the most
15 damaging --

16 Q. Can you point that out for us, please?

17 A. On the -- let's see. Actually, on the right-hand side
18 there's a box that says "narratives." Yeah, go over there.
19 There it is. And you see the top one is how it was
20 originally -- it has both foreclosure and the 120 days past
21 due. But still on the new, updated version it still has
22 that foreclosure, that code 245, "foreclosure process
23 started."

24 Q. So let's take a look. What did Ocwen update -- so they
25 didn't update the foreclosure code; correct?

1 A. Right. According to this, it looks like they didn't.

2 Q. They did update the past due amount; correct?

3 A. Yes. The past due, under that 6128 you see there's a
4 zero, so they, they got that right that there's no past due.

5 Q. So Ocwen looked at part of it, but not all of it. Is
6 that accurate?

7 A. Right. They got like three out of four maybe, but
8 still left on like the, what I consider the most damaging
9 aspect of the credit report was the reference to
10 foreclosure.

11 Q. How would you characterize such an investigation?

12 A. Just considering what was at stake, it was wholly
13 inadequate. And considering how many times before this they
14 had a chance to get it right, it's, to me it's a whole
15 pattern of reckless behavior.

16 Q. And, so, did they get points for trying on this?

17 A. No. You have to do -- for an investigation to be good
18 enough, you have to figure out what's the cause of the
19 dispute and what you need to do to fix it. And that means
20 you have to be thorough enough. And they simply weren't
21 thorough enough here.

22 Q. So this is in April of 2014; correct?

23 A. Yes.

24 Q. I would like to jump ahead once more just to get an
25 overview of the entire process here. I'm handing you what's

1 been marked as Plaintiff's Exhibit 23. Can you give us the
2 date on this ACDV?

3 A. This is -- there are two ACDVs. They're both dated --
4 well, the first two I have here, July 29th, 2014.

5 Q. What's the response date?

6 A. August 8th, 2014.

7 Q. Who was the responder?

8 A. It's Daniel John.

9 Q. We saw him before; right?

10 A. Yes.

11 Q. Okay. And, so, on August 8th on Page 387 -- let me ask
12 you again. Is this another one of the documents you
13 reviewed when preparing your report?

14 A. Yes.

15 Q. Okay. What does -- and he's verified this report as
16 well?

17 A. Yeah. This is -- he's verified his report. On the top
18 right-hand side it has the two dispute codes again, 001 for
19 not his or hers and 007 for disputes current/previous
20 account status, payment history, payment rating, and the
21 payment history profile. Basically, like I said, 007 you're
22 saying there's potentially a lot of things wrong with this
23 account.

24 Q. And, so, do you recall when the balloon note was due?

25 A. July of 2014; right?

1 Q. So this dispute is after that point?

2 A. Yes, that's correct.

3 Q. So this is the first tradeline verifying that
4 Mr. Daugherty was current at that point and wasn't behind;
5 correct?

6 A. Right.

7 Q. And let's move along to -- find the number on it
8 here -- 389. When did this dispute -- when was it created?

9 A. The same day. It was created on July 29th, 2014. And
10 the response date was August 8th, 2014.

11 Q. And responded by?

12 A. Daniel John.

13 Q. Daniel John. Had them both again?

14 A. Uh-huh.

15 Q. Same dispute, same day. Both of them after the balloon
16 note's come due; correct?

17 A. Yes.

18 Q. And the result of his investigation was?

19 A. Verified as reported, furnishing that same wrong
20 information saying that a foreclosure proceeding is starting
21 and account 120 days past due with a past due balance of
22 \$6,128.

23 Q. So what, in your opinion, does it say to have this
24 tradeline continually to reappear after Ocwen tried to
25 modify it?

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1 A. Well, it, it, it shows that there's -- I mean, no --
2 there's no institutional memory as part of their, of their
3 investigation. It's like -- an entity like Ocwen has to
4 have a way to remember what it already knows.

5 And it already knows it's only supposed to have one
6 account listed in Equifax. And then it knows that even with
7 the one that wasn't supposed to be in his Equifax report, it
8 finally changed it to a zero balance. And then when it
9 comes back showing \$6,128 past due, it forgets that it
10 already corrected that one.

11 So you're just -- you're seeing just no level of care
12 here and disregard of responsibility and of the sensitivity
13 of this information. I mean, this is very delicate stuff.
14 You know, you can't go into a china shop and start throwing
15 your elbows around and break all that pretty crystal. This
16 is that sensitive when it comes to people's lives.

17 And here, again, you just have Ocwen having somebody
18 press a button saying "verified as reported" without putting
19 any due regard into the importance of the information.

20 Q. Mr. Hendricks, in your report you discuss the ACDV data
21 exchange.

22 A. Yes.

23 Q. Can you please describe that for the jury?

24 A. Well, it's what all this is. A consumer sends a
25 dispute to Equifax or any credit bureau and they create an

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1 ACDV. And then they electronically send it to the
2 furnisher; in this case Ocwen. And Ocwen's job is then to
3 investigate. That's the responsibility. And then they
4 return the ACDV.

5 But what I talk about is that if that's all you do --
6 if all you're doing is sending one electronic message and,
7 you know, doing some superficial glance of one record system
8 and pushing a button saying "verified as reported," that's
9 not going to be enough for a complex dispute like this one
10 where something is really wrong and it's really damaging.

11 And, so, I talk about that saying, sure, you can do the
12 ACDV exchange. But if that's all you do, it's not going to
13 amount to an adequate investigation.

14 Q. And you testified that this has been the standard in
15 the industry?

16 A. The ACDV exchanges, yes. I mean, this is the way they
17 communicated back and forth. I mean, some furnishers will
18 do a thorough enough check of their records and, you know,
19 find that there's something wrong and then, you know,
20 instruct the credit bureau to correct it.

21 But the thing you can't forget is that Equifax and the
22 other credit bureaus, when it's information about a
23 creditor's account, they're looking to that creditor to, to
24 tell them what to do with it, to instruct them to either
25 delete it or modify it or leave it. And if -- whatever the

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1 creditor says, that's what it goes when it comes to that
2 account.

3 Q. And how long has, has the standard been in place that
4 you have to do an investigation?

5 A. 1996 -- '97 is when it took effect. But, yeah, we
6 talked about those 1996 amendments. That's when they first
7 put this duty on creditors like Ocwen.

8 Q. So for 20 years they've had this notice that they have
9 to investigate disputes?

10 A. Yes, sir.

11 Q. And you testified too that this duty was enhanced?

12 A. Enhanced and strengthened in 2003 by more work by
13 Congress. And then in 2004 another institution got specific
14 saying you can't do a superficial response. You've got to
15 do something searching, something with care.

16 Q. So for 12 years now they've known that this is
17 inadequate?

18 A. They knew or should have known.

19 Q. And, yet, here Mr. Daugherty is trying to clear up his
20 credit report that's stuck inside this system?

21 A. Yeah. I mean, the, the system is set up so you
22 shouldn't have to file a federal lawsuit to get your credit
23 report corrected. But that's exactly what happened here.
24 It just wasn't going to get corrected until he went to all
25 this trouble and did all this fighting.

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1 I mean, you talk about a consumer who's responsible and
2 did everything he possibly could, I, I think Mr. Daugherty
3 has just done an amazing job of staying with this, you know.

4 And this is about responsibility. I mean, we all have
5 responsibilities in the system. And Ocwen's responsibility
6 is to investigate when they get a dispute. And they have
7 not lived up to that responsibility, in my opinion, in this
8 case. They disregarded it.

9 Q. So what is your ultimate opinion in this case?

10 A. That from everything we've seen so far, this is the way
11 Ocwen has always done things and I see no evidence --
12 they're showing no interest in changing or even
13 acknowledging they made any mistakes in this case despite
14 everything that we're producing right now.

15 So my opinion is that, that the same thing will happen
16 to other consumers. If they have any sort of dispute,
17 they're not going to get a reasonable investigation as long
18 as Ocwen keeps operating this way. And my opinion is
19 they're showing that they continue to, they're going to
20 operate this way.

21 Q. Thank you, Mr. Hendricks.

22 THE COURT: Cross-examination, Mr. Manning?

23 MR. MANNING: Thank you, Judge.

24 THE COURT: And remember that it will be necessary
25 for me to interrupt you.

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1 MR. MANNING: Oh, that's right. Thank you for
2 reminding me.

3 THE COURT: Yes, sir. Go ahead, please.

4 CROSS EXAMINATION

5 BY MR. MANNING:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. We haven't met before; right?

9 A. No.

10 Q. Okay. So I want to start just at the beginning. We
11 talked a little bit about your background. And I understand
12 that according to your resume which you've attached to your
13 report that you've testified at trial or been deposed over
14 100 times?

15 A. That sounds about right, yes. It's in that ballpark.

16 Q. You're a professional witness; right?

17 A. Well, I'm not sure what that means, but I try and be
18 professional in everything I do that I get paid for, yes.

19 Q. And, in fact, you're a witness who gets paid \$400 an
20 hour for the testimony you render for the plaintiffs; right?

21 A. I get \$400 an hour for trial testimony and \$400 an hour
22 if they take my deposition and the other side has to pay for
23 that, but they didn't take my deposition in this case. But
24 my regular rate for doing the expert reports is \$300 an
25 hour.

1 Q. And for today -- so that means every hour for the last
2 couple days -- I guess yesterday and today you're at \$400 or
3 is it capped at a certain number?

4 A. Yeah. It's going to be \$400 an hour for the time I
5 actually spent, you know, working inside the courtroom.

6 Q. I think in your report you said for a day it could be
7 \$1,200 a day plus your expenses?

8 A. Right. It's like -- especially for a deposition. So
9 if someone takes my deposition, I usually have a minimum of
10 \$1,200 to cover three hours. And then if the deposition --
11 they can go up to seven hours if they want and that's
12 usually not much fun. But then I'll invoice them for the
13 balance. So that's -- yeah, \$1,200 usually refers to a
14 minimum for a day for deposition testimony.

15 Q. Would that apply here as well?

16 A. Yeah, sure.

17 Q. How much have you been paid by the plaintiffs to date?

18 A. It's around \$5,500.

19 Q. And that's not including the trial?

20 A. That's right. That's not including the trial.

21 Q. And that's not including your preparation or travel for
22 the trial?

23 A. That's correct.

24 Q. Do you know how much you're running a tab right now?

25 A. No. I mean, today is the second day of trial. Right?

1 So today is day number two. And I was able to fly here in
2 an hour-long flight and drive an hour from Charleston. That
3 was quite a drive.

4 Q. And you had a report, so I take it your report was
5 really the bulk of that \$5,500 or approximate amount?

6 A. Yes, sir.

7 Q. Okay. And do you still have a copy of the report in
8 front of you?

9 A. I apologize. No. I thought I did but I don't.

10 Q. Do we have a copy for the witness? I know you prefer a
11 hard copy.

12 THE WITNESS: Thank you. May he approach?

13 BY MR. MANNING:

14 Q. So that's your expert report; right?

15 A. Yes, sir.

16 Q. And this was the report that you prepared for the
17 plaintiff to support their case; right?

18 A. Yes.

19 Q. This is --

20 A. Well, I mean, it's to express my expert opinions in the
21 case.

22 Q. And it's dated April 3rd of 2015, right, on Page 32?

23 A. Yes, April 3rd, 2015.

24 Q. So as of the date of this report, which as we sit here
25 today is over a year ago, you have not undertaken to

1 investigate anything further; right?

2 A. Oh, yeah, after, after I found out there was going to
3 be a trial in this case, all sorts of additional information
4 came my way which I've analyzed.

5 Q. All right. Well, let me ask it this way then. You've
6 identified your expert report and you've identified the
7 materials considered. And this is the report which is the
8 basis of your opinions which plaintiff just asked you about?

9 A. Yes.

10 Q. And the materials considered here are plaintiff's
11 summons --

12 A. Yes.

13 Q. You could read along with me.

14 A. Okay. Go right ahead.

15 Q. Plaintiff's summons. I take it by that you mean the
16 complaint.

17 A. Yes.

18 Q. So you started with the plaintiff's lawsuit and what he
19 claims happened; right?

20 A. Right.

21 Q. Then you go to the plaintiff's credit reports; is that
22 right?

23 A. Yes.

24 Q. You don't identify anything by Bates stamp or a
25 particular credit report or anything at all?

1 A. Right. My intention is that in the case it's typical
2 that both sides have, they produce to each other the
3 information. So the credit reports are referred to as what
4 at that point in time both sides had, meaning Ocwen and the
5 plaintiff.

6 Q. The next subject that you identify there is having
7 considered is various correspondences by plaintiff and
8 defendants; right?

9 A. Yes.

10 Q. You don't identify what those are?

11 A. No. It's a similar answer. There was -- we've seen a
12 little bit of the dispute correspondence. There were
13 letters written by Ocwen, by Equifax, and by the plaintiff.
14 And, so, all the correspondences that were in play at that
15 point are the ones I'm referring to.

16 Q. And there were a lot of documents produced after that,
17 but you don't reference specifically which ones you had
18 available to you at the time you prepared your opinions
19 which you just rendered in this case; right?

20 A. Well, I mean, I hope I'm answering your question, but
21 in my report which is dated April 3rd, 2015, I reference the
22 documents that I had available to me at that time.

23 And since then, I mean, in the last month or two, a lot
24 more documents have come my way because it became clear that
25 this case was going to go to trial.

1 Q. But you never updated your report?

2 A. No.

3 Q. You never -- okay. So let me make sure this is clear.
4 You're now claiming that you looked at other things, but in
5 your report you don't list those and you never gave a new
6 report amending your opinions or changing them in any way;
7 correct?

8 A. Right. I can't -- in my report like I couldn't, I
9 couldn't list that I reviewed Ocwen's documents because you
10 had not produced them by then.

11 Q. So this report -- again, that's all I'm asking you
12 about. I just want to know about this report and what you
13 just talked about with the plaintiff and what you considered
14 with this report. Do you understand that?

15 A. Yes.

16 Q. Okay. With this report I'm trying to get to what was
17 available to you at that time because you're rendering
18 opinions -- I think you understand this. You're rendering
19 opinions and you're telling the jury what you think
20 happened, but you're not giving them the basis for what your
21 report is.

22 A. Yes, I am.

23 Q. And here you have the plaintiff's complaint, which is
24 what he's claiming --

25 A. Uh-huh.

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1 Q. -- in the lawsuit. You said you started there. And
2 then you went to his credit reports, but you don't say which
3 ones or who they were from.

4 MR. NOLAN: Your Honor, I'd like to object and see
5 if we can get a question for Mr. Hendricks's answer here.

6 THE COURT: Yeah. The objection, Mr. Manning, to
7 your statements are --

8 MR. MANNING: Are you telling me to break it down?

9 THE COURT: Well, no, I don't want you to break
10 down statements. I want you to ask the witness a question.

11 MR. MANNING: Okay, Judge, I will do so.

12 BY MR. MANNING:

13 Q. Mr. Hendricks, if you look at Page 32 you'll see
14 "materials considered;" right?

15 A. Yes.

16 Q. The first one is plaintiff's summons. That's the
17 complaint and that's where you started. That's the first
18 basis of your opinion. Right?

19 A. Yes.

20 Q. The next one is the plaintiff's credit reports. And
21 you don't identify from whom you obtained the credit
22 reports, what the dates were, or what you reviewed by any
23 other identification, identifying features so that we could
24 know as we sit here today which credit reports you actually
25 looked at, do you?

1 A. Well, but you just asked me that and I explained those
2 are the credit reports that were available, had been
3 produced in this case as of April 3rd, 2015.

4 Q. But we don't know which ones you looked at because you
5 don't tell us. You would agree with that?

6 A. I looked at all the ones that are listed. I listed
7 plaintiff's credit reports, plural. I listed -- I looked at
8 all the ones that were available at that point in time.

9 Q. And let me back up. You don't tell us which ones were
10 available to you or that you reviewed specifically; correct?

11 A. That's correct because you knew which ones were
12 available at that point in time, so I didn't want to be
13 redundant.

14 Q. You understand that you wrote the report and you're the
15 one who needs to identify what you relied upon; right?

16 A. And that's why I did that.

17 Q. The next thing you say that you considered was various
18 correspondences by plaintiff and defendants. And there's no
19 identification about what we're talking about in terms of a
20 letter, a fax, an e-mail of any kind. It just says
21 "correspondence." Right?

22 A. Right.

23 Q. So as we sit here today, there's no way for us to know
24 based on your report or the opinions that you offered what
25 the correspondence is that you had available or even looked

1 at; right?

2 A. No, I disagree. It's like all the correspondence -- I
3 mean, there was -- there's correspondence -- you can call
4 this is a voluminous case, but I've seen bigger. But you
5 know all the correspondence that were in play produced by
6 plaintiff and defendants in this case as of April 3rd. The
7 plaintiff's counsel know. You know and I knew. And those
8 are the ones I looked at.

9 Q. The issue, Mr. Hendricks, is the jury doesn't know.
10 And your report doesn't say --

11 A. I'm just telling them.

12 Q. Let me just finish my question.

13 A. Okay, all right.

14 Q. The issue, sir, is you're rendering opinions and you're
15 claiming to have reviewed documents. But the only documents
16 that the jury knows that you've actually seen or looked at
17 are the ones the plaintiffs showed you today and what's in
18 your report which doesn't identify anything else
19 specifically; isn't that correct?

20 A. I'm afraid I got lost in that question. I
21 definitely -- we definitely talked about these documents
22 that are exhibits here today. We talked about those here
23 today. So the jury knows about those ones. And the jury
24 knows about the letter we put on the screen. And what was
25 the rest of the question?

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1 Q. Let's start there.

2 A. Okay.

3 Q. The jury doesn't know about anything else that you
4 would have considered because you don't tell them anything
5 else; right?

6 A. I just told them. I just told the jury that everything
7 that was in play by April 3rd, 2013, is what I reviewed
8 because that's all that was available at that time.

9 Q. Okay. And, Mr. Hendricks, I don't mean to quibble with
10 you, but you're not telling us what was available to you in
11 the form of what those correspondences were other than what
12 you looked at today; right?

13 MR. NOLAN: Your Honor, I object to this
14 questioning. If it's this important for Mr. Manning and
15 Ocwen to know what he relied on, they had an opportunity to
16 take his deposition and review that with Mr. Hendricks at
17 any point in time during this litigation.

18 THE COURT: Well, he does have that option, but he
19 also has the option not to depose him. I'm going to let him
20 explore. And the reason I do that is I think the basis of
21 the opinion -- when I instruct the jury on how to consider
22 expert opinions, the basis of the opinion is important. The
23 witness can answer if he can. I overrule the objection.

24 MR. NOLAN: Yes, Your Honor.

25 MR. MANNING: Thank you, Judge.

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1 THE WITNESS: So, I, I reviewed all the Bates
2 stamped documents produced by Equifax, all the
3 correspondence that was relevant to their disputes. We've
4 gone through some of the Equifax documents, Bates stamped
5 documents here today. You know, we don't want to spend
6 three days going through all of them. We just went through
7 some of the most important ones.

8 And, so, I -- you know, it's up to the jury to decide
9 if they think that my opinions are worthwhile and if these
10 documents support them. But I thought we've laid it out
11 pretty openly.

12 BY MR. MANNING:

13 Q. Okay. So other than what you've talked about today,
14 the basis for your opinion is focused on those documents
15 because here you're not identifying anything else. We can
16 agree on at least that much. Right?

17 A. No. The jury has seen other Bates stamped documents.
18 They've seen other Equifax documents that have come in like
19 all -- they just spent I don't know how long showing all of
20 those ACDVs, those 12, ones that they went to the trouble of
21 getting those into evidence. So these are not all 12 of
22 those. But, yes, these are the most important documents to
23 understanding what went wrong with Ocwen's investigation,
24 yes. And that is the basis of my opinion, yes.

25 Q. And in this report you don't purport to be basing your

1 opinion on everything that was conveyed between Ocwen and
2 Equifax or Aggressive Credit Repair and Equifax or between
3 Mr. Daugherty and Aggressive Credit Repair or between
4 Equifax and Ocwen. There's a whole series of players.
5 Right?

6 A. Right. And I think -- these documents, for starters,
7 encompasses what went back and forth between Equifax and
8 Ocwen and shows what was done and, more importantly, was not
9 done in their investigation.

10 And, you know, that's -- these are industry standard
11 documents. And Ocwen's responses are accurately reflected
12 in these documents and I can rely on them and I came up with
13 my opinions.

14 As for the correspondence, yeah, I was familiar with
15 the correspondence from -- Aggressive Credit Repair had done
16 some of the correspondence. That's in the category of
17 correspondence. And we've heard about that in this trial.

18 Q. So if you look again on Page 32, sir, "materials
19 considered," it says various correspondences by plaintiff
20 and defendants. You're aware that Aggressive Credit Repair
21 is not a defendant; right?

22 A. That's true. That's a good point. But he was doing it
23 on behalf of plaintiff, so I consider that part of
24 plaintiff's as he was kind of like an agent of plaintiff.

25 Q. Okay. So this statement that you say you based your

1 opinions on various correspondences between plaintiff and
2 defendants without further specificity you're now saying
3 would encompass Aggressive Credit Repair correspondence?

4 A. Sure. Back then, yes, I knew some of the
5 correspondence -- not all of it -- some of the dispute
6 correspondence was done by Aggressive Credit Repair, yes.

7 Q. Okay. The next item was Bates stamped documents
8 produced by defendant Equifax. I think I know what you're
9 referring to there because we've seen some of those today.
10 Is that what you're referring to?

11 A. Right. And they're also these internal documents by
12 Equifax that are called ACIS cases, which is A-C-I-S. And
13 they reflect what happens when Equifax interacts with the
14 consumer file. And they list out dates. To some extent,
15 they might parallel or encompass some of the information in
16 the ACDV.

17 But the ACDVs are the ones that tell you the most about
18 the investigation and the re-investigation. So those are
19 the most relevant to my opinion, and that's why I'm glad
20 we've gone through them today.

21 Q. And you identify a number of things in your report that
22 you believe Equifax did wrong; right?

23 A. Yes, sir.

24 Q. Okay. So you're here today and all you've been
25 focusing on is what you think Ocwen did wrong. But you

1 agree, and you've stated in your report, that Equifax was at
2 fault here?

3 A. Yeah, Equifax, Equifax made mistakes, yes. They had a
4 responsibility to do things and in my opinion they didn't do
5 some of them.

6 Q. Okay. And we've -- I know the jury at this point has
7 probably gotten sick of my difference in roles, but you know
8 there's a difference between furnishers and reporting
9 creditors.

10 A. Yes, there are furnishers and then there are consumer
11 reporting agencies. That's how this statute defines them.

12 Q. And you understand that the furnisher conveys the data.
13 Credit reporting compiles and has it reported accurately.
14 And they have different roles.

15 A. Right. We talked about a furnisher can do it monthly
16 reporting or on an AUD or an ACDV. That's how they can
17 furnish the information.

18 Q. And they have separate responsibilities?

19 A. Yes, yes, that's right. They have -- one overarching
20 responsibility -- at the top of their responsibility is
21 accuracy, completeness, and fairness. And that's one --
22 that's a general responsibility that they both share.

23 Q. You'd agree that furnishers such as my client, Ocwen,
24 don't control what the credit bureaus do. They can't make
25 them report something.

1 A. Well, I have trouble agreeing with that because I just
2 testified today that on a situation like this, Equifax is
3 looking to Ocwen for its instructions about what, how to
4 keep or to leave or to modify the Ocwen related information
5 in its databases. So control, no, but overarching
6 influence, yes. Ocwen has tremendous influence into what
7 its data looks like in Equifax's database.

8 Q. Okay. My question to you, sir, was control. And your
9 answer is, no, they don't control. Right?

10 A. Well, I mean, I don't know how we're going to define
11 "control." But, I mean, yeah, they're separate companies,
12 yes, and the credit report is sold by Equifax. That's
13 Equifax's credit report.

14 Q. Thank you. When you were talking about your
15 background, I believe you mentioned you had written a book.
16 That book involved you interviewing people at Equifax;
17 right?

18 A. No. Actually, I interviewed people from Fair Isaac for
19 the chapters on credit scoring. I had deposition and trial
20 testimony from Equifax because Equifax has been in trial
21 several times.

22 Q. So it's your testimony that you, you never interviewed
23 anyone who had worked at Equifax as part of your book?

24 A. The book does not quote -- I don't remember it quoting
25 anybody from Equifax stemming from an interview. I've

1 interviewed people from Equifax before in the past but not
2 for the book.

3 Q. Okay. The knowledge that you started to talk about
4 related to your experience in the industry is not knowledge
5 that you gained from working at any credit bureaus; correct?

6 A. That's correct except through my being on the Experian
7 Consumer Advisory Council. I accumulated really good
8 specialized knowledge there because the council consisted of
9 creditors like American Express and Capital One and other,
10 other mortgage companies. So it was, it was pretty useful.

11 Q. In your expert report you state that it's your opinion
12 that Equifax's procedures for ensuring accuracy were not
13 adequate; correct?

14 A. That's correct.

15 Q. You go on to state that Equifax's re-investigation of
16 Mr. Daugherty's dispute in this matter to determine the
17 disputed information was accurate was not correct; right?

18 A. Right. I criticized it, right, because they were
19 over-relying on -- they rely too much on Ocwen when it was
20 clear that Ocwen was not doing a good enough job and they
21 could have taken a closer look on the fact that there's two
22 account numbers.

23 Q. In fact, you state that Equifax has stood out for its
24 nonresponsiveness to consumer disputes; right?

25 A. Yes, there is an interesting history there, yes.

1 Q. And in your report you talk about that. You say that
2 Equifax has a pattern of failing to perform adequate
3 re-investigations of consumer disputes; right?

4 A. Yes.

5 Q. Why is that?

6 A. Why is Equifax?

7 Q. Yes.

8 A. I guess you want my opinion on that. Right? Because,
9 I mean, --

10 Q. You talk about it in your report. I'd like you to tell
11 the jury about it.

12 A. Equifax has its way of doing things, and it just has
13 not shown any interest in changing how it does things. And,
14 so, they just -- I guess "stubborn" is one word for it. But
15 they keep -- despite several events where they have been
16 shown to be doing the wrong thing, they really have not
17 changed some of those things yet.

18 Q. In your report you state that Equifax continues to
19 fail -- these are your words and I'll quote it. Quote:
20 "Equifax continues to fail to make obviously needed changes
21 to be sufficiently responsive to consumers' disputes and to
22 avoid inflicting foreseeable damage on consumers rights." Do
23 you recall that?

24 A. Yes.

25 Q. Do you still maintain that opinion today?

1 A. I mean, yeah, for, for -- yes, for certain cases for
2 sure, yes. This is an on-going problem, yes.

3 Q. And you point out that in this case in your report that
4 Equifax was the one that included one, not two, accounts
5 with the same account number; right?

6 A. Well, they had it in their database, yes, absolutely.

7 Q. And they were reporting on a single account --
8 Mr. Daugherty had a single account -- with the same account
9 number but they were doing it twice; right?

10 A. Right. And they continued to do that after Ocwen
11 furnished them -- furnished information telling Equifax to
12 keep that second derogatory account in there.

13 Q. And we'll get, we'll get to that because I understand
14 that you want to talk about that and I'll let you in a
15 little bit. One of the accounts --

16 THE COURT: You need to find a stopping place,
17 counsel.

18 MR. MANNING: I'm sorry?

19 THE COURT: You need to find a stopping place.

20 MR. MANNING: Okay. Let me get just two questions
21 into this. One of the -- because I'm still on the same
22 subject.

23 BY MR. MANNING:

24 Q. One of the accounts that Equifax included in
25 plaintiff's file showed the \$6,128 past due with foreclosure

1 proceedings started. The other one was current. And your
2 report says the other report the tradeline was correct.
3 Right?

4 A. Right.

5 Q. So because Ocwen was furnishing monthly data that was
6 accurate, one of the tradelines with Equifax was correct?

7 A. I think I agree with that.

8 Q. Okay. That's a perfect stopping point. Thank you.

9 THE COURT: Ladies and gentlemen of the jury, I'm
10 going to release you for the evening. While you're out, do
11 not discuss this case among yourselves or permit anyone to
12 discuss it with you or in your presence. And remember that
13 you're under continuing obligation not to listen to, view,
14 or read any media coverage that there might be.

15 Have a good, restful evening and I will see you all
16 tomorrow morning at 9:00. We'll stand in recess.

17 (Trial recessed at 4:00 p.m.)
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1 I, Lisa A. Cook, Official Reporter of the United
2 States District Court for the Southern District of West
3 Virginia, do hereby certify that the foregoing is a true and
4 correct transcript, to the best of my ability, from the
5 record of proceedings in the above-entitled matter.

6
7
8 s\Lisa A. Cook

June 1, 2016

9 Reporter

Date

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